

No. 16304 /

United States
Court of Appeals
for the Ninth Circuit

ESTATE OF J. LESLIE VOGEL, ROBERT G.
PARTRIDGE and ELIZABETH S. VOGEL,
Executors, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of The Tax
Court of the United States

FILED
APR 18 19

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Tax Court of the United States

Docket No. 57535

ESTATE OF J. LESLIE VOGEL, ROBERT G.
PARTRIDGE and ELIZABETH S. VOGEL,
EXECUTORS, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1955

Apr. 26—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 27—Copy of petition served on General Counsel.

Apr. 26—Request For Circuit hearing in San Francisco, Calif. filed by taxpayer. 4/28/55, granted.

Jun. 7—Answer filed by G.C.

Jun. 10—Copy of answer served on taxpayer, San Francisco.

1957

Apr. 10—Hearing set June 17, 1957, San Francisco.

Jun. 17, 20, 21—Hearing had before Judge Van Fossan on the merits. Submitted after trial. Appearance of Grant G. Calhoun, Esq. filed. Stipulated of Facts filed. Petitioner's brief due Aug. 6, 1957; answering brief due Sept. 20, 1957; reply brief due Oct. 21, 1957.

1957

Jul. 9—Transcript of hearing June 17, 1957 filed.
Jul. 9—Transcript of hearing June 20, 1957 filed.
Jul. 9—Transcript of hearing June 21, 1957 filed.
Jul. 29—Motion for extension of time to Aug. 25,
 1957 to file Brief filed by Petitioner.
 7/29/57, Granted to Aug. 20, 1957. Served
 Jul. 31, 1957.
Sep. 3—Brief for Petr. filed. Served 9/11/57.
Oct. 18—Desp. brief in answer filed. Served 10/
 22/57.
Nov. 18—Motion by petr. for extension of time to
 Dec. 17, 1957 to file reply brief. Granted
 11/18/57. Served 11/21/57.
Dec. 16—Petr.'s Brief in Reply filed. Served 12/
 19/57.

1958

Apr. 28—Findings of Fact and Opinion filed,
 Judge Van Fossan, Dec. will be entered
 under R. 50. Served 4/28/58.
Jun. 24—Resp. Computation filed.
Jun. 30—Notice of Hearing on R. 50 Comp. Aug.
 6, 1958, Wash., D. C.
Jul. 31—Petr.'s objection to Comp. of Respondent
 under Rule 50 filed.
Aug. 6—Hearing on Rule 50. Judge Van Fossan.
 Order will be entered in accordance with
 Resp. Computation.
Aug. 8—Decision entered, Judge Van Fossan.
Aug. 14—Transcript of Proceedings 8/6/58 filed.
Sep. 15—Petition for review by U.S.C.A. 9th filed
 by petr.

1958

Oct. 17—Proof of service of petition for review filed.

Dec. 17—Designation of Contents of record on review, with proof of service thereon filed.

Dec. 17—Designation of additional portions of record with proof of service thereon filed.

[Title of Tax Court and Cause.]

PETITION

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency A:R:90—D:HMB dated February 14, 1955, and as a basis of their proceeding allege as follows:

1. The petitioner are the duly appointed, qualified and acting Executors of the Last Will and Testament of J. Leslie Vogel, deceased, with principal offices at 1710 Shell Building, San Francisco 4, California. The state tax return here involved for the Estate of J. Leslie Vogel, deceased, who died August 16, 1950, was filed with the Collector for the 1st District of California, 100 McAllister Street, San Francisco, California.
2. The Notice of Deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioners on the 14th day of February, 1955.
3. The deficiencies as determined by the Com-

missioner are in estate taxes in the amount of \$29,601.88, of which approximately \$29,601.88 is in dispute.

4. The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The determination by the Commissioner that the assets of decedent standing in his name were not his separate property but were, together with the assets standing in the name of Elizabeth S. Vogel, his widow, all community property;

(b) The determination by the Commissioner that the sum of \$1500.00 per month for the support of the widow for a period of 18 months during administration of the estate was excessive and that no more than \$1000.00 per month for said period of time was an allowable deduction; and

(c) The determination by the Commissioner that the cost of maintenance and upkeep of a boat owned by the estate was not an allowable deduction.

5. The facts upon which petitioners rely as the basis for this proceeding are as follows:

(a) On January 15, 1934, Les Vogel Chevrolet Company was organized to operate an automobile agency and the stock of said corporation was community property of the decedent and Elizabeth S. Vogel, his wife. On April 18, 1936, the stock was transferred to the decedent and his said wife as joint tenants. At a corporate meeting on Decem-

ber 23, 1942, it was determined to liquidate the corporation as of midnight, December 31, 1942. Forthwith following the liquidation, the assets of said corporation were transferred to a partnership consisting of decedent, his said wife, and J. Leslie Vogel, Jr., decedent's son, as equal partners. Said partnership operated the automobile agency until October 31, 1946, when a new corporation, Les Vogel Chevrolet Company, was formed. The partnership assets were transferred to it and one-third of the stock of said corporation was issued to decedent, one-third to his said wife, and one-third to his said son. Said stock was the major item of the estate. Decedent's one-third interest in the automobile agency represented by the one-third of the issued and outstanding shares of said stock of said corporation in the name of decedent at the time of his demise had been converted to and was at the time of the demise of decedent his separate property, and the one-third interest in said automobile agency represented by the one-third of the issued and outstanding shares of stock of said corporation in the name of Elizabeth S. Vogel, decedent's said wife, had been converted to and was at the time of decedent's demise, her separate property, and the assets resulting from profits of said partnership and dividends from the stock of said new corporation were the separate property of decedent and his said wife, respectively.

(b) Said widow of decedent was actually paid by said Executors \$1500.00 per month for her sup-

port for a period of 18 months during the administration of the estate. Said payment was authorized by the laws of the State of California and was made pursuant to the order of the Superior Court of the State of California, in and for the City and County of San Francisco, the court in which said estate was pending, and that said sum is not in excess of what was reasonably required for the support of the widow in view of her class and station in life, the size of the estate, and the income therefrom.

(c) A boat was owned by the decedent and his estate and \$5400.00 was actually expended by said Executors for its maintenance and upkeep.

Wherefore petitioners pray that this Court may hear the proceeding and determine that there is no deficiency due.

Dated: San Francisco, California April 22, 1955.

/s/ TEVIS JACOBS,

Counsel for Petitioners.

Of Counsel:

Samuels, Jacobs & Sills.

Duly Verified.

EXHIBIT "A"

U. S. Treasury Department
Internal Revenue Service
100 McAllister Street
San Francisco 2, California

Office of District Director of Internal Revenue

Feb. 14, 1955

In Replying Refer to: Chief, Audit Division A:R:
90-D:HMB.

O:A:UE—First California District
Estate of J. Leslie Vogel
Date of Death: August 16, 1950

Estate of J. Leslie Vogel
Robert G. Partridge and
Mrs. Elizabeth S. Vogel, Co-Executors
1710 Shell Building
San Francisco 4, California

Dear Mr. Partridge and Mrs. Vogel:

You are advised that the determination of the estate tax liability of the above-named estate, discloses a deficiency of \$29,601.88 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address,

Exhibit "A"—(Continued)

Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the District Director of Internal Revenue, Audit Division, 100 McAllister St., San Francisco 2, California. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after the receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner,

/s/ By GLEN T. JAMISON,
District Direct of Internal Revenue.

Enclosures:

Statement

Form 1276

Agreement Form

Exhibit "A"—(Continued)
STATEMENT

Chief, Audit Division

A:R:90—D:HMB

Estate of J. Leslie Vogel
Robert G. Partridge and
Mrs. Elizabeth S. Vogel, Co-Executors
1710 Shell Building
San Francisco 4, California

O:A:UE—First California District

Estate of J. Leslie Vogel

Date of Death: August 16, 1950

	Liability	Assessed	Deficiency
Estate tax	\$91,818.05	\$62,216.17	\$29,601.88

This determination of the Federal estate tax liability of the above-named estate has been made upon the basis of information on file in this office.

A copy of this letter and statement has been mailed to your representative, Mr. Tevis Jacobs, 333 Montgomery Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

Adjustments to Net Income

Net estate for basic tax as disclosed by the return\$200,404.11

Additions to value of net estate and

decrease in deductions:

(a) Jointly owned property—Schedule E	\$ 7,034.16
(b) Other miscellaneous property— Schedule F	29,110.93
(c) Funeral and administration expenses— Schedule J-1	11,939.43
(d) Debts of decedent—Schedule K-2	5,687.59
(e) Support of dependents—Schedule L-4	18,000.00
(f) Marital deduction—Schedule M-9	61,077.55
	132,849.66

	\$333,253.77

Increase in deductions:

(g) Stocks and bonds—Schedule B	18,955.00

Net estate for basic tax as adjusted\$314,298.77

Net estate for additional tax as adjusted\$354,298.77

Exhibit "A"—(Continued)

Explanation of Adjustments

(a) Jointly owned property—Schedule E

		Returned	Determined
Item 3—Savings account—Bank of America, Marina Branch	\$ 0.00	\$ 9,834.48	
Item 4—Savings account—Bank of America, Polk-Van Ness Branch	19,177.14	9,588.57	
Item 5—Series E—United States War Bonds	6,008.50	3,004.25	
Item 7—Series E—United States War Bonds	0.00	9,792.50	
		\$25,185.64	\$32,219.80
Increase	\$ 7,034.16		

Available information discloses that all jointly owned property of the spouses was community property. The above adjustments have therefore been made on a community property basis.

(b) Other miscellaneous property—
Schedule F

		Returned	Determined
Item 1—Kneass Twin Screw Cabin Cruiser	\$10,000.00	\$ 5,000.00	
Item 2—Clothing and personal effects	10.00	5.00	
Item 3—White metal man's ring with white solitaire stone	650.00	325.00	
Olympic Club Class A Golf privilege	0.00	142.50	
4 shares—Pacific Turf Club stock	0.00	1,700.00	
500 shares—Pacific Gas & Electric Redeemable first Preferred	0.00	7,156.25	
467 shares—Bank of America	0.00	6,333.69	
217 shares—Pacific Gas & Electric common	0.00	3,499.13	
250 shares—Leslie Financing Company	0.00	5,627.62	
Anzavista Apartment property	0.00	8,800.00	
Savings account—Marina Branch, Bank of America	0.00	1,181.74	
		\$10,660.00	\$39,770.93
Increase	\$29,110.93		

Exhibit "A"—(Continued)

Explanation of Adjustment—(Continued)

The determined value of the itemized securities in the name of the surviving spouse shown above is based on the mean between the high and the low sales or bid and ask quotations on the New York Stock Exchange or other reliable trade sources.

The value of the Anzavista Apartment property is shown as the investment therein at the date of death of the decedent.

The Leslie Financing Company stock is based on the book value.

(c) Funeral and Administration Expenses—

Schedule J-1

	Returned	Determined
Item 2—Attorneys' fees	\$ 7,000.00	\$ 3,260.61
Item 3—Cypress Lawn Cemetery Association	1,601.35	800.68
Item 4—Halsted & Company	1,342.91	671.45
Item 5—Julius Eppstein	232.88	116.44
Item 6—Miscellaneous administration and legal expenses	175.00	87.50
Item 7—Appraisals	1,105.35	552.68
Item 8—A. H. Goebel, Certified Public Accountant	150.00	75.00
Item 9—Fireman's Fund Insurance Company	725.00	228.00
Item 10—Maintenance and upkeep on boat	5,400.00	0.00
	<hr/>	<hr/>
	\$17,732.49	\$ 5,793.06
Decrease		\$11,939.43

Item 2 and Item 9 have been adjusted to the correct amount received in accordance with affidavit on file in this office.

Item 10 has been disallowed since it is held that this item does not represent an administration expense.

Since the entire estate has been determined to be community property the deductions shown above are shown as community one-half interest.

Exhibit "A"—(Continued)

Explanation of Adjustment—(Continued)

(d) Debts of Decedent—Schedule K-2

		Returned	Determined
Item 1—American Ambulance			
Company	\$ 9.50	\$ 4.75	
Item 2—Nursing care—last illness	65.30	32.65	
Item 3—Medicines—last illness	24.33	12.16	
Item 4—Roberto Escamillo, M.D.	50.00	25.00	
Item 5—Franklin Hospital—			
last illness	43.75	21.88	
Item 6—San Francisco Elevator			
Company	3,140.00	1,570.00	
Item 7—Federal income taxes due at			
date of death	7,735.52	3,714.37	
	\$11,068.40	\$ 5,308.81	
Decrease			\$ 5,687.59

Item 1 to Item 6, inclusive, have been adjusted on a community property basis.

Item 7—Since a joint Federal income tax return was filed by the surviving spouse for the calendar year 1950, allocation of the tax due has been made to the date of death, as follows:

	Income to		
	Date of Death		Surviving
	of Decedent		Spouse
Salary	\$13,500.00	\$ 6,750.00	\$ 6,750.00
Dividends	33,876.60	16,600.00	17,276.60
	\$47,376.60	\$23,350.00	\$24,026.60
Total tax reported for year			\$14,478.52
Tax allocated to decedent—			
23350.00/47,376.60 of	\$14,478.52		\$ 7,135.87
Less:			
Estimated tax paid before death	\$ 2,500.00		
Tax withheld from decedent's salary	921.50		3,421.50
Tax as corrected			\$ 3,714.37

Exhibit "A"—(Continued)

Explanation of Adjustment—(Continued)

(e) Support of Dependents—Schedule L-4

	Returned	Determined
Item 1—Family allowance	\$27,000.00	\$ 9,000.00
Decrease		\$18,000.00

It has been determined that monthly allowance of \$1,000.00 is a reasonable allowance to the widow. Estate tax has therefore been increased by \$18,000.00 as follows:

	Returned	Determined
Family allowance as corrected		
18 months at \$1,000.00 a month	\$18,000.00	
Community one-half share		9,000.00
Family allowance claimed		27,000.00
Decrease		\$18,000.00

(f) Marital deduction	\$61,077.55	\$ 0.00
Decrease		\$61,077.55

Inasmuch as the entire estate of the decedent and his spouse has been determined as community property no marital deduction is allowable.

(g) Stocks and Bonds—Schedule B

	Returned	Determined
Item 1—Transamerica Corporation	\$ 15,500.00	\$ 7,875.00
Item 2—National Automotive		
Fibres, Inc.	17,000.00	8,375.00
Dividend	0.00	200.00
Item 3—Bendix Aviation		
Corporation	2,700.00	5,100.00
Item 4—California Jockey Club	7,350.00	3,937.50
Item 5—Pacific Turf Club, Inc.	3,200.00	1,700.00
Item 6—Italo Petroleum Corporation		
of America	670.00	340.00
Item 7—Les Vogel Chevrolet		
Company	300,000.00	300,000.00
Item 9—25-year Mortgage & Trust		
Fund Bond, The Olympic Club ..	125.00	62.50
	\$346,545.00	\$327,590.00
Decrease		\$ 18,955.00

Exhibit "A"—(Continued)

Explanation of Adjustment—(Continued)

Dividend shown on item 2 was payable to stockholders of record prior to the date of death and has therefore been held as belonging to decedent.

Item 3 has been corrected to the mean between the high and low sale quotation on Bendix Aviation Corporation as reported on the New York Stock Exchange.

Item 6 was understated in the amount of \$10.00

All items have been corrected to show the community one-half interest.

Computation of Estate Tax

	Returned	Determined
Gross estate	\$418,282.55	\$435,472.64
Deductions for basic tax	217,878.44	121,173.87
Net estate for basic tax	\$200,404.11	\$314,298.77
Net estate for additional tax	\$240,404.11	\$354,298.77
Gross basic tax	\$ 9,071.95	
Credit for State inheritance, etc. taxes	7,257.56	
Gross basic tax less credit		\$ 1,814.39
Total gross taxes (basic and additional) \$ 99,075.61		
Gross basic tax	9,071.95	
Gross additional tax		90,003.66
Total net basic and additional taxes		\$ 91,818.05
Total estate tax payable		\$ 91,818.05
Estate tax assessed:		
Original,		
First California District		62,216.17
Deficiency of estate tax		\$ 29,601.88

Served April 27, 1955.

[Endorsed]: T.C.U.S. Filed April 26, 1955.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, and for answer to the petition filed by the above-named petitioners admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(a)-(c), inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph 4 of the petition and subparagraphs (a) to (c), inclusive, thereunder.

5(a). Admits that on January 15, 1934, Les Vogel Chevrolet Company was organized to operate an automobile agency and the stock of said corporation was community property of the decedent and Elizabeth S. Vogel, his wife; denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c). Admits that a boat was owned by the decedent and his estate, but denies the remaining allegation contained in subparagraph (c) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ JOHN POTTS BARNES,
Chief Counsel,
Internal Revenue Service.

Of Counsel: Melvin L. Sears, Regional Counsel;
T. M. Mather, Assistant Regional Counsel, Internal Revenue Service.

[Endorsed]: T.C.U.S. Filed June 7, 1955.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated that the following facts may be considered as true without prejudice to the right of either party to introduce further and other evidence not inconsistent with this stipulation.

1. On January 15, 1934 the Les Vogel Chevrolet Company was incorporated to operate an automobile agency.

2. In 1942, to avoid the application of the excess profits tax, to admit his son, Les Vogel, Jr., into the business, and for other reasons, decedent decided to dissolve the corporation and form a limited partnership. Substantially all records of the dissolved corporation, including the stock certificate book and minutes, have been destroyed.

3. From information available, the resolution contained in the corporate minutes relative to the

dissolution was as follows: "Resolved—That the assets of this corporation be transferred to Les Vogel as of Midnight, December 31, 1942." The corporation balance sheet submitted with the 1942 income tax return showed a net worth as follows:

Capital stock	\$20,160.00
Paid-in-surplus	28,750.00
Earned surplus	50,533.11

	\$99,443.11

4. The opening entries in the partnership ledger show the following capital accounts:

Les Vogel	\$ 33,147.71
Les Vogel, Jr.	33,147.70
Mrs. Les Vogel	33,147.70

5. The partnership agreement was executed on February 6, 1943 and names decedent's wife and son as limited partners with decedent as a general partner for a term of 10 years from January 1, 1943, each having an equal share in the profits.

6. Decedent's son, Les Vogel, Jr., acquired by purchase a one-third interest in the business. He gave a note for the purchase price. Profits attributable to the son's one-third interest were applied against the note until the full amount was liquidated in April, 1946. The son has been recognized as a valid partner for years subsequent to 1942.

7. On September 25, 1945, on the son's return

from military service, the partnership agreement was changed to make the son a general partner.

8. On November 1, 1946, the business was incorporated. The partnership balance sheet, as of October 31, 1946, filed with the application for incorporation showed the following accounts involving the partners:

Accounts payable:

Les Vogel	\$ 66,083.09
Elizabeth Vogel (Mrs. Vogel) .	73,880.64
Les Vogel, Jr.	37,664.26
<hr/>	
	\$177,627.99
<hr/>	

Partners' capital:

Les Vogel	\$ 32,709.22
Elizabeth Vogel	32,709.20
Les Vogel, Jr.	32,709.20
<hr/>	
	\$ 98,127.62
<hr/>	

9. The opening balance sheet for the corporation as of November 1, 1946 showed the following:

Capital stock	\$150,000.00
<hr/>	

Accounts payable:

Les Vogel and Elizabeth Vogel	\$105,382.15
Les Vogel, Jr.	20,373.46
<hr/>	
	\$125,755.61
<hr/>	

10. In order to provide the \$50,000.00 payment by each partner for the stock issued, the amounts necessary to bring the partnership capital accounts up to \$50,000.00 were taken from the accounts payable accounts.

11. Capital stock was subsequently increased to a stated value of \$300,000.00 with 30,000 shares outstanding. At the time of decedent's death, the decedent, Vogel and Les Vogel, Jr., each held 10,000 shares.

12. Decedent's probated will was executed on December 13, 1946, and provided in pertinent part as follows:

“Fourth: All property in which at this time I have an interest or which stands in the name of myself or myself and my wife, either as tenants in common or as joint tenants, is community property. It is my intention to dispose not only of all property which I am entitled to dispose of by will, including my separate estate and my share of the community property, but of the entire community estate. If my wife, prior to the probate of this will, shall not have elected whether she shall take under this will or the rights given her by law, she shall in due course following my death, make such election. * * *”

“Sixth:—(e) All my other jewelry, my household furnishings and furniture, and my family residence at San Francisco * * * give to my beloved wife, Elizabeth, to have and to hold forever.”

13. The residence mentioned above was held in the name of decedent and his wife as joint tenants and had been so held since it was acquired in 1941.

14. On the partnership books, separate drawing accounts were maintained for each partner. Income tax payments were charged to the respective drawing accounts. Other than income tax, the only charge to the wife's drawing account was a monthly allowance of \$100.00 and a \$500.00 monthly payment on an F.H.A. loan on the family residence. Taxes on the residence were charged to decedent's drawing account.

15. The balances in the separate drawing accounts of the decedent and his wife on the partnership books were combined into one account on the books of the present corporation. Against this account, various investments and personal expenses of the decedent were charged, along with other charges. With the exception of income tax, the only charge to this account specifically applicable to decedent's wife was a \$3,000.00 gift to their son. A similar \$3,000.00 gift to the son from the decedent was charged against the account on the same day. On October 31, 1947, the remaining balance in the account was divided into two equal parts of \$11,662.05. One part was deposited to a savings account, No. 3139, with the Bank of America, Marina Branch, in the name of Elizabeth Vogel. The other part was deposited in a savings account, No. 1421 at the Polk-Van Ness Branch of the Bank of America in the name of Les or Elizabeth Vogel.

16. Decedent and his wife had separate brokerage accounts with Dean Witter and Co. Decedent's account was opened in 1946 and his wife's in 1948. Purchases by decedent during 1946 and 1947 were charged to his partnership drawing account prior to the partnership dissolution on October 31, 1946 and to their drawing account on the corporations' books subsequent to that date. Investments in wife's brokerage account were paid from a checking account at the Marina Branch of the Bank of America, in the name of Les or Elizabeth Vogel.

17. Besides the checking account mentioned above, there were three savings accounts; one was in the name of Elizabeth Vogel at the Marina Branch of the Bank of America, Account No. 3139; one was in the name of Les or Elizabeth Vogel at the Polk-Van Ness Branch of the Bank of America, Account No. 1421; and one was in the name of J. Les or Elizabeth Vogel at Branch 253 of the Bank of America, Account No. 4214. As noted above, \$11,662.05 representing one-half of the remaining balance of their drawing account on the corporate books was transferred to the savings account in the name of Elizabeth Vogel on October 31, 1947. Some of decedent's salary checks were also deposited to this account. Later these amounts were transferred to the checking account at the Marina Branch of the Bank of America in the names of Les or Elizabeth Vogel. One of the savings accounts, which was with the Polk-Van Ness Branch of the Bank of America, Account No. 1421, in the name of Les or Elizabeth Vogel, was not very active. The one-half of the re-

maining balance of their drawing account was deposited to this account on October 31, 1947. It was subsequently withdrawn. The other savings account was with Branch 253 of the Bank of America in the name of J. Les or Elizabeth Vogel, Account 4214. The principal deposits to this account were salary checks of the decedent. Decedent's wife apparently made most of these deposits and it was her practice to retain \$100.00 to \$300.00 from these checks for household expenses and to deposit the balance. Transfers were made from this account to the checking account in the Marina Branch in the name of Les or Elizabeth Vogel.

Not all salary checks were deposited in the savings accounts. A number of them were deposited to the above checking account. As noted above, transfers were made from time to time from the savings accounts to the said checking account. From the said checking account, decedent also made payments for his own individual expenditures, joint living expenses, and investments to his wife's name.

19. Separate Federal returns were filed for years 1946 and 1947 and joint returns for years 1948, 1949 and 1950. Separate State returns were filed for the entire period, 1946 through 1950. On all separate returns, Federal and State, income from whatever source was divided evenly between the separate returns. This was true of dividends from stock registered in decedent's name and his wife's, or both names jointly. It was also true of capital gain or loss on the sale of such securities. On the 1947 Federal return, the capital gains on the sale of securities

were described as community. On the 1947 State return, the total income reported was described as community.

/s/ GRANT G. CALHOUN,
Counsel for Petitioners.

/s/ NELSON P. ROSE,
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

GGC:jr 6/20/57

[Endorsed]: T.C.U.S. Filed June 20, 1957.

30 T. C. No. 12
Tax Court of the United States

Estate of J. Leslie Vogel, Robert G. Partridge and
Elizabeth S. Vogel, Executors, Petitioners, v.
Commissioner of Internal Revenue, Respondent.

Docket No. 57535. Filed April 28, 1958.

FINDINGS OF FACT AND OPINION

1. Held, the evidence failing to establish that a transmutation took place, respondent correctly determined that the entire gross estate of J. Leslie Vogel and Elizabeth Vogel was community property.
2. Held, the evidence does not establish that a family allowance in excess of \$1,000 per month for 18 months was a reasonable and proper deduction from the gross estate.

Grant G. Calhoun, Esq., for the petitioners.

Aaron S. Resnik, Esq., for the respondent.

The respondent determined a deficiency in Fed-

eral estate tax for the estate of J. Leslie Vogel in the amount of \$29,601.88.

Two basic issues are presented. The first, whether respondent properly included in decedent's gross estate as community property the assets standing in the name of decedent and in the name of Elizabeth Vogel.

The second issue is whether respondent correctly reduced a deduction for the allowance granted decedent's widow by the California court during the settlement of the estate from \$1,500 per month to \$1,000 per month.

Petitioners concede that \$5,400 expended for maintenance and upkeep of a boat was not deductible as an administration expense.

The status of assets reported on the estate tax return as joint property was not put in issue by the pleadings.

Findings of Fact

Some of the facts are stipulated, the stipulation being incorporated herein by this reference.

Decedent, J. Leslie Vogel, died August 16, 1950, a resident of California. A Federal estate tax return was filed on February 15, 1952, by the executors of his estate with the collector of internal revenue for the First District of California.

On January 15, 1934, the Les Vogel Chevrolet Company was incorporated to operate an automobile agency. The stock of the corporation was community property of J. Leslie Vogel (hereinafter referred to as decedent or Les Vogel), and his wife,

Elizabeth S. Vogel (hereinafter sometimes referred to as Elizabeth Vogel or Elizabeth.)

In 1942, decedent, in order to avoid the application of the excess profits tax, to admit his son, Les Vogel, Jr., into the business, and for other reasons, decided to dissolve the corporation and to form a limited partnership. The corporate minutes indicate that the assets of the corporation were transferred to decedent as of midnight, December 31, 1942. A resolution was written in 1942 looking to the dissolution of the corporation. The partnership agreement was executed on February 6, 1943, and named Elizabeth Vogel and Les Vogel, Jr., as limited partners, with decedent as a general partner for a term of ten years from January 1, 1943, each having an equal share in the profits. The opening entries in the partnership ledger show the following capital accounts:

Les Vogel	\$33,147.71
Les Vogel, Jr.....	33,147.70
Mrs. Les Vogel.....	33,147.70

Separate drawing accounts were maintained for each partner. Income tax payments were charged to the respective drawing accounts. Other than income tax, the only charge to Elizabeth's drawing account was a monthly allowance of \$100 and a monthly payment of \$500 on an F.H.A. loan on the family residence. Taxes on the residence were charged to decedent's drawing account.

On November 1, 1946, the business was again incorporated. The partnership balance sheet, as of Oc-

tober 31, 1946, filed with the application for incorporation, showed the following:

Accounts payable:

Les Vogel	\$ 66,083.09
Elizabeth Vogel (Mrs. Vogel)	73,880.64
Les Vogel, Jr.....	37,664.26
	<hr/>
	\$177,627.99

Partners' capital:

Les Vogel	\$ 32,709.22
Elizabeth Vogel	32,709.20
Les Vogel, Jr.....	32,709.20
	<hr/>
	\$ 98,127.62

The opening balance sheet for the corporation showed the following:

Capital stock	\$150,000.00
	<hr/>

Accounts payable:

Les Vogel and Elizabeth Vogel	\$105,382.15
Les Vogel, Jr.....	20,373.46
	<hr/>
	\$125,755.61
	<hr/>

In order to provide a \$50,000 payment by each partner for the stock issued, the amounts necessary to bring each of the partnership capital accounts up to \$50,000 were taken from the accounts payable.

One-third of the stock in the new corporation was issued to each of the former partners. Decedent and Elizabeth held theirs individually in their own names. The value of the capital stock was subsequently increased to \$300,000 with 30,000 shares outstanding. At the time of decedent's death, decedent, Elizabeth, and Les Vogel, Jr., each held 10,000 shares.

Decedent and Elizabeth maintained two savings accounts in both their names, a savings account in the name of Elizabeth Vogel, and a checking account in the names of Les or Elizabeth Vogel.

Following the dissolution of the partnership the separate drawing accounts of decedent and Elizabeth were combined into one account on the books of the corporation. Various investments and personal expenses of decedent, along with other items, were charged against this account. With the exception of income tax, the only charge to the account specifically applicable to Elizabeth was a \$3,000 gift to their son. A similar \$3,000 gift to the son from the decedent was charged against the account on the same day. On October 31, 1947, the remaining balance was divided into two equal parts of \$11,662.05. One part was deposited in the savings account at the Marina Branch of the Bank of America in the name of Elizabeth Vogel. Some of decedent's salary checks were also deposited there. Later, these amounts were transferred to the checking account.

The other portion of the drawing account was deposited in the savings account in the name of Les or Elizabeth Vogel at the Polk-Van Ness Branch of

the Bank of America. It was subsequently withdrawn.

The principal deposits to the savings account in the name of J. Les and Elizabeth Vogel at Branch 253 of the Bank of America were salary checks of the decedent. Elizabeth made most of these deposits; it was her practice to retain \$100 to \$300 from the checks for household expenses and to deposit the balance. Transfers were made from this account to the checking account.

Not all salary checks were deposited in the savings accounts; a number were deposited in the checking account. Decedent made payments from the checking account for his own individual expenditures, for joint living expenses, and for investments in Elizabeth's name.

Decedent and Elizabeth maintained separate brokerage accounts, decedent's account being opened in 1946 and Elizabeth in 1948. Purchases by decedent during 1946 and 1947 were charged to his partnership drawing account prior to the partnership dissolution on October 31, 1946, and to their drawing account on the corporation's books subsequent to that date. Investments in Elizabeth's brokerate account were paid for from the checking account.

Payment for 467 shares of Bank of America stock standing in Elizabeth Vogel's name was also made from the checking account.

In 1948 or 1949 the Leslie Financing Company was formed by Elizabeth Vogel, Les Vogel, Jr., and Dorothea Vogel. Each contributed \$10,000 to the

initial capital. Elizabeth obtained the necessary funds from previous investments.

About 1950 Elizabeth purchased a parcel of real property from Arthur M. Hardy, an old friend of the family. Hardy then designed and built the Anzavista Apartments on the property. All of Hardy's negotiations in the matter were with Elizabeth and the apartments were built for her. The record is inconclusive as to the source of the funds for the apartment venture.

During a conversation with an internal revenue agent after decedent's death, Elizabeth referred to the Anzavista's property as decedent's. She further represented that whatever property she and decedent had belonged to both of them. At the trial Elizabeth referred to the Anzavista property as "the whole family's."

The tax returns of decedent and Elizabeth Vogel for 1940 and all subsequent years were prepared by Lawrence H. Goebel, a certified public accountant. The information for these returns was mostly obtained from the office manager of the Les Vogel Chevrolet Company. Goebel reviewed the returns with the decedent, but could not recall discussing the nature of the property with him. Goebel assumed that the income from the various sources was community property, to be split accordingly.

Separate Federal returns were filed for the years 1946 and 1947, and joint returns for the years 1948, 1949, and 1950. Separate state returns were filed for the entire period 1946 through 1950. Historically, dividends were divided between decedent and Eliza-

beth Vogel. This was also true of dividends from stock registered in decedent's or Elizabeth Vogel's name, or both names jointly. It was true of capital gain or loss on the sale of such securities. The dividends from the Les Vogel Chevrolet Company were always divided equally between decedent and Elizabeth Vogel.

On the 1947 Federal return the capital gains on the sale of securities were described as community. On the 1947 state returns the total income reported was described as community.

Upon the advice of attorneys, decedent's and Elizabeth Vogel's dividends were segregated for the first time on the 1950 state tax returns filed after decedent's death.

Robert G. Partridge was decedent's personal attorney for approximately 15 years, beginning in the mid-1930's. Partridge and his associate, Wallace O'Connell, prepared two wills for decedent. The first will was executed December 13, 1946. The second was never signed.

The first will contained the following provisions:

Fourth: All property in which at this time I have an interest or which stands in the name of myself or myself and my wife, either as tenants in common or as joint tenants, is community property. It is my intention to dispose not only of all property which I am entitled to dispose of by will, including my separate estate and my share of the community property, but of the entire community estate. If my wife, prior to the probate of this will, shall not have

elected whether she shall take under this will or the rights given her by law, she shall in due course following my death, make such election. She shall, in any event, however, be entitled to exempt property and family allowance out of my estate.

Notes taken by Partridge during a discussion with decedent prior to the drafting of the first will included the words "transmutation agreement (Jan. 1, '43)." Partridge had had no independent knowledge on this subject and wrote down only what information decedent communicated to him. At no time during their discussions concerning the will did decedent show Partridge any written agreement which would have transmuted community to separate property.

Decedent and Partridge never discussed the transmutation of any property other than the Les Vogel Chevrolet Company.

The second, and unsigned, will was drafted for decedent in 1950. A draft of a proposed will for Elizabeth Vogel was prepared at approximately the same time. Both drafts refer to a written agreement converting their community property to separate property.

During discussions concerning the second will Partridge suggested to decedent that it would be best to have some expression of the transmutation agreement in writing. No agreement transmuting the property was ever prepared by Partridge or O'Connell and none was introduced in evidence, nor did any witness testify to the actual existence of such an agreement, either oral or written.

Partridge did not know in fact whether there ever was a transmutation.

At the time of decedent's death, decedent, Elizabeth Vogel, their son Les Vogel, Jr., and their daughter Dorothea lived in a three-story detached dwelling at 369 Marina Boulevard, San Francisco. Both Les, Jr., and Dorothea were over 21. The residence, located in a wealthy neighborhood, had been acquired in 1941 and was held in the name of Les Vogel and Elizabeth Vogel as joint tenants.

They employed a full-time maid and a gardener; the maid "lived in". Elizabeth also, on occasion, employed caterers; she entertained approximately once a month.

During his lifetime most of decedent's salary, which was about \$1,800 a month, was expended in maintaining the home.

After decedent's death, Les Vogel, Jr., and Dorothea continued to occupy the house with their mother and a servant. Neither Les Vogel, Jr., nor Dorothea made any contribution to the maintenance of the home, either before or after decedent's death.

On September 7, 1950, Elizabeth Vogel filed a petition with the Superior Court of the State of California, San Francisco County, for a family allowance of \$1,500 a month from the estate of J. Leslie Vogel. On September 19, 1950, the Judge of the Superior Court entered an order granting the allowance. During the probate of the estate, checks totalling \$27,000 were paid to Mrs. Vogel as a family allowance.

Decedent's will was admitted to probate and

Elizabeth Vogel filed an election to take under its provisions on September 12, 1952.

A Federal estate tax return was filed on February 15, 1952. Various securities and miscellaneous assets were treated on the return as decedent's separate property. No reference was made to certain property standing in the name of Elizabeth Vogel alone. Deductions were claimed on the return for a bequest to surviving spouse (marital deduction) of \$61,077.55 and an allowance for support of dependents (family allowance) paid to Elizabeth Vogel totalling \$27,000 (\$1,500 per month for 18 months).

The respondent determined that the entire gross estate of decedent and Elizabeth Vogel was community property and recomputed the tax on a community property basis. The following assets standing in the name of Elizabeth Vogel were added to the gross estate:

4 shares Pacific Turf Club stock	\$1,700.00
500 shares Pacific Gas & Electric redeemable first preferred stock	7,156.25
467 shares Bank of America stock	6,333.69
217 shares Pacific Gas & Electric common stock	3,499.13
250 shares Leslie Financing Company	5,627.62
Anzavista Apartments property	8,800.00
Savings account, Marina Branch of Bank of America	1,181.74

Respondent decreased all expenses of administration, funeral expenses, and debts of the decedent by one-half, except \$5,400 for maintenance and upkeep of a boat, which amount was totally disallowed. This disallowance of \$5,400 is not contested

by petitioners. The marital deduction was also disallowed. The family allowance was decreased from \$1,500 per month for 18 months to \$1,000 per month for the same period; one-half the total sum was permitted as a deduction. Respondent determined a deficiency of \$29,601.88 in the return.

Opinion

Van Fossan, Judge: The first question is whether respondent correctly determined that all the assets standing in the name of decedent and all those standing in the name of Elizabeth Vogel were community property.

Petitioners contend that the community interest of decedent and Elizabeth in the Les Vogel Chevrolet Company was transmuted to separate property by oral agreement on January 1, 1943. Petitioners further contend that certain assets standing in the name of Elizabeth Vogel alone were purchased with income derived from her separate interest in the Chevrolet Company and thus were her separate property.¹

In California, community property may be transmuted to separate property by oral agreement be-

¹ Cal. Civ. Code:

Sec. 162. Separate property; wife:

Separate Property of the Wife.—All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

tween the spouses.² *Tomaier v. Tomaier*, 23 Cal. 2d 754, 146 P. 2d 905 (1944). It is not always necessary to show an express oral agreement; the status of the property may be demonstrated by the nature of the transaction or appear from the surrounding circumstances. *Long v. Long*, 88 Cal. App. 2d 544, 199 P. 2d 47 (1948). It should be noted, however, that property acquired by either the husband or the wife, or both, after marriage is presumed to be community property, and one asserting that such property is separate rather than community has the burden of establishing that fact.³ *Wilson v. Wilson*, 76 Cal. App. 2d 119, 172 P. 2d 568 (1946).

² Cal. Civ. Code:

Sec. 158. Contracts with each other and third persons:

Husband and Wife May Make Contracts. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on Trusts.

³ Cal. Civ. Code:

Sec. 164. Community property; presumptions as to property acquired by wife; limitation of actions:

All other property acquired after marriage by either husband or wife, or both, including real property situated in this State and personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this State, is community property; but whenever any real or personal property, or any interest therein or encumbrance

There is a disputable presumption in California law that property acquired by a married woman by an instrument in writing is her separate property.⁴ *Nichols v. Mitchell*, 32 Cal. 2d 598, 197 P. 2d 550 (1948). Petitioners, however, may not depend on this presumption alone to overcome the respondent's determination that the property in question is community. Cf. *Shea v. Commissioner*, 81 F. 2d 937 (C.A. 9, 1936), affirming 30 B.T.A. 1265.

thereon, is acquired by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if acquired by such married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any such property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is the community property of said husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with such married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of said property.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband, or his heirs or assigns, of such married woman, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property from and after one year from the filing for record in the recorder's office of such conveyances, respectively.

⁴ Cal. Civ. Code, sec. 164, *supra*.

Petitioners rely heavily upon the testimony of Robert G. Partridge, decedent's personal attorney for 15 years. Partridge and his associate, Wallace O'Connell, prepared two wills for decedent. The first was executed on December 13, 1946, and was admitted to probate following decedent's death. It provided, *inter alia*, that

All property in which at this time I have an interest or which stands in the name of myself or myself and my wife, either as tenants in common or as joint tenants, is community property.

The second will was drafted for decedent in 1950. It was never signed. A draft of a will for Elizabeth was prepared at approximately the same time. Both refer to a written agreement transmuting community property to separate property, but no direct evidence of such a written agreement was introduced at the trial.

Notes taken by Partridge during a discussion with decedent prior to the drafting of the first will include the words "transmutation agreement (Jan. 1, '43)." Partridge testified that he had no independent knowledge on this subject and wrote down only what information decedent communicated to him. At no time during these discussions did decedent show Partridge any written agreement which would have transmuted community to separate property.

Decedent and Partridge never discussed the transmutation of any property other than the Les Vogel Chevrolet Company.

Decedent was unable to explain to Partridge why Elizabeth's interest in the Chevrolet Company was her separate property. Partridge stated that he did not know in fact if there ever was a transmutation.

During discussions concerning the second will Partridge suggested to decedent that it would be best to have some expression of the transmutation agreement in writing. This was never done.

The specific language of the wills fails to support petitioners' argument. The first will does not refer to a transmutation agreement and states that all property standing in decedent's or in decedent's and Elizabeth's name is community property.

The draft of decedent's second will and the draft of Elizabeth's will both refer to a written transmutation agreement, but, as noted above, the existence of this writing has not been established. It can only be inferred that if such an agreement was contemplated it had not reached accomplishment at the time of decedent's death.

The fact that Elizabeth became a limited partner in the Les Vogel Chevrolet Company on February 6, 1943, and later, when the business was re-incorporated, held one-third of the stock in her own name does not establish that her interest was separate property.

In *George W. Van Vorst*, 7 T. C. 826 (1946), a California case in which both husband and wife were among the partners in an enterprise, this Court, after surveying the law, concluded (p. 830):

that if any part of the capital investment of

the petitioner [husband] in the partnership was previously community property, it was not transmuted into his separate property by virtue of the partnership agreement.

Naked legal title is of little value in determining whether property is community or separate. *Tomaier v. Tomaier*, *supra*.

Assuming that an agreement transmuting community to separate property had been arrived at, its existence would, of necessity, have been within the knowledge of Elizabeth Vogel. Although she testified at length for the petitioners, she was at no time asked whether a transmutation agreement had ever been discussed by her and her husband, or if such existed.

It is well established that failure of a party to introduce evidence within his possession and which, if true, would be favorable to him, gives rise to the presumption that if produced it would be unfavorable. *Wichita Terminal Elevator Co.*, 6 T. C. 1158, *affd.* 162 F. 2d 513 (C.A. 10, 1946). This is especially true when the party failing to produce the evidence has the burden of proof. *Wichita Terminal Elevator Co.*, *supra*.

After considering all the evidence we are convinced that petitioners have not sustained their burden of proof and have failed to show that a transmutation took place.

Petitioners concede on brief that originally all the property owned by decedent and Elizabeth Vogel was community property. Since we have con-

cluded that petitioners have failed to show a transmutation from community to separate property, all the assets standing in the name of decedent or in the name of Elizabeth Vogel, including the Chevrolet property, must be regarded as community property. The pleadings raise no issue as to the jointly held property, nor does petitioner raise any issue as to respondent's adjustments of administration expenses and similar expenditures, excepting the family allowance as to the widow.

We hold that respondent correctly determined that the entire gross estate of decedent and Elizabeth Vogel was community property.

The last question is whether decedent's estate is entitled to a deduction for family allowance of \$1,500 per month for the support of decedent's widow, or \$1,000 per month, as determined by the respondent.

Pursuant to section 812(b)(5) of the Internal Revenue Code of 1939, an estate may deduct such amounts as

reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction * * * under which the estate is being administered * * *.

Regulations 105, section 81.40, provides that the support of dependents of the decedent during the settlement of the estate is deductible but pursuant to the following rules:

- (a) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.
- (b) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.
- (c) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

California grants "such reasonable allowance" to the widow during the settlement of the estate as should be necessary for her maintenance according to her circumstances. Under the California statute, included with the widow were the minor children, if any. The law was changed recently by adding to the family, adult children who have been declared incompetent by the court. The two children of decedent who lived in the family home both before and during the settlement of the estate and made no contribution thereto were adults and had not been declared incompetent. Thus it is that the two children were excluded and the family allowance was exclusively for the support of the widow.

The decedent, according to the record, spent most of his monthly salary of \$1,800 in maintaining the home, but it should be remembered that he provided maintenance for four persons, namely, himself, his

wife, and two adult children, while the allowance during the settlement of the estate was for the support of the widow only. If decedent was able to provide maintenance for the family of four in the home for less than \$1,800 per month, it would seem to follow that respondent's allowance of \$1,000 per month for maintenance of the widow alone was adequate and reasonable for her support and this in the manner and style previously obtaining. We have very little evidence of the actual cost of maintaining the home, either before or during the settlement of the estate. Suffice it to say, petitioner has not demonstrated or proved that respondent's allowance was inadequate.

Decision will be entered under Rule 50.

Served April 28, 1958.

[Title of Tax Court and Cause.]

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation reflecting a deficiency in estate tax in the amount of \$29,601.88 is submitted on behalf of the respondent in compliance with the opinion of the Court determining the issues in this proceeding. The decedent died on August 16, 1950.

The computation is submitted without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court pur-

suant to the statute in such cases made and provided.

/s/ ARCH M. CANTRALL,
Chief Counsel,
Internal Revenue Service.

Of Counsel: Melvin L. Sears, Regional Counsel, Aaron S. Resnik, Attorney, Internal Revenue Service, 1069 Flood Building, San Francisco 2, California.

Ap:SF:AA:ENJ

Computation Statement

In re: Estate of J. Leslie Vogel, Robert G. Partridge and Elizabeth S. Vogel, Executors, 1710 Shell Building, San Francisco 4, California.
Docket No. 57535.

Date of Death—August 16, 1950.

	Estate Tax
Deficiency	\$29,601.88

Recomputation of tax liability has been prepared in accordance with the opinion of The Tax Court of the United States filed April 28, 1958.

STATEMENT OF ACCOUNT

Date of Death—August 16, 1950

Estate tax paid (and assessed)	\$ 62,216.17
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Payments as follows:

Paid Feb. 15, 1952

Original	\$62,216.17
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Total payments	\$62,216.17
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Liability	91,818.05
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Unpaid deficiency in estate tax	\$ 29,601.88
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Return filed February 15, 1952.

Statutory notice mailed February 14, 1955.

Adjustments to Net Estate

Net estate for basic tax as disclosed by statutory notice	\$314,298.77
Net estate for basic tax as revised in accordance with the opinion of The Tax Court of the United States (unchanged)	\$314,298.77
Net estate for additional tax, (unchanged)	\$354,298.77

Computation of Estate Tax

Gross estate	\$435,472.64
Deductions for basic tax	121,173.87
Net estate for basic tax	\$314,298.77
Net estate for additional tax	\$354,298.77
Gross basic tax	\$ 9,071.95
Credit for State inheritance, etc. taxes	7,257.56
Gross basic tax less credit	\$ 1,814.39
Total gross taxes (basic and additional)	\$99,075.61
Gross basic tax	9,071.95
Gross additional tax	90,003.66
Total net basic and additional taxes	\$ 91,818.05
Total estate tax payable	\$ 91,818.05
Estate Tax assessed, Original First California District	62,216.17
Deficiency in estate tax	\$ 29,601.88

[Endorsed]: T.C.U.S. Filed June 24, 1958.

[Title of Tax Court and Cause.]

PETITIONERS' OBJECTIONS TO COMPUTATION OF RESPONDENT UNDER RULE 50

Petitioners object to the computation of Respondent for the following reasons:

- (1) Attorney fees paid to Petitioners' counsel (subsequent to the filing of the petition) in the amount of \$1,000.00 have not been taken into account as a deduction from the gross estate. Evidence thereof is in the transcript (page 155).
- (2) Funeral expenses have been deducted only to the extent of one-half the amount thereof, or \$1,588.57, rather than in the full amount of \$3,177.14. It is considered that the allowance thereof in full is solely a question of law.

Attached hereto is Petitioners' alternative computation reflecting the above objections.

/s/ GRANT G. CALHOUN,
Counsel for Petitioners.

Adjustments to Net Estate

Net estate for basic tax as disclosed by statutory notice	\$314,298.77
Net estate for basic tax as revised in accordance with objections to computation of respondent (less \$2,588.57)	\$311,710.20
Net estate for additional tax revised in accordance with objections to computation of respondent	\$351,710.20

Computation of Estate Tax

Gross estate	\$435,472.64
Deductions for basic tax	123,762.44
Net estate for basic tax	\$311,710.20
Net estate for additional tax	\$351,710.20
Gross basic tax	\$ 8,968.41
Credit for State inheritance, etc. taxes	7,174.73
Gross basic tax less credit	\$ 1,793.68
Total gross taxes (basic and additional)	\$98,247.20
Gross basic tax	8,968.41
Gross additional tax	89,278.79
Total net basic and additional taxes	\$ 91,072.47
Total estate tax payable	\$ 91,072.47
Estate Tax assessed, Original First California District	62,216.17
Deficiency in estate tax	\$ 28,856.30

Served August 1, 1958.

[Endorsed]: T.C.U.S. Filed July 31, 1958.

Tax Court of the United States
Washington

Docket No. 57535

ESTATE OF J. LESLIE VOGEL, ROBERT G.
PARTRIDGE and ELIZABETH S. VOGEL,
Executors, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

The Court's Opinion was filed April 28, 1958 and on June 24, 1958, pursuant thereto, respondent filed a computation for entry of decision. Petitioner filed on July 31, 1958, objections to respondent's computation and an alternative computation. Now, therefore, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$29,601.88.

[Seal] /s/ ERNEST H. VAN FOSSAN,
Judge.

Entered: August 8, 1958.

Served: August 8, 1958.

United States Court of Appeals
For the Ninth Circuit

T. C. Docket No. 57535

ESTATE OF J. LESLIE VOGEL, ROBERT G.
PARTRIDGE and ELIZABETH S. VOGEL,
Executors, Petitioners,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Taxpayer, the petitioner in this cause, by Grant G. Calhoun, Counsel, hereby files its petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States handed down on August 8, 1958, T. C. Docket No. 57535, determining deficiencies in the petitioner's Federal estate tax in the amount of \$29,601.88, and respectfully shows:

I.

The petitioner, Estate of J. Leslie Vogel, Robert G. Partridge and Elizabeth S. Vogel, Executors, is an estate of J. Leslie Vogel, deceased, who died August 16, 1950, in San Francisco, California and estate tax return was filed with the Collector of Internal Revenue for the 1st District of California at San Francisco, California on or about the 15th day of February, 1952.

II.

Nature of the Controversy

The controversy involves the proper determination of the petitioner's liability for Federal estate tax. There are four issues involved:

1. The character of certain property owned by decedent and his spouse, whether community property as claimed by the Commissioner or whether separate property or joint tenancy property so as to qualify for the marital deduction. In particular whether or not certain interests in the Les Vogel Chevrolet Co. had been transmitted into separate property from community property at some time exclusive of the year 1942 and prior to April 2, 1948.
2. The reasonableness of the family allowance.
3. Whether, administration, family allowance and funeral expenses are deductible in full or on a community property basis as determined by the Commissioner.
4. Whether legal expenses incurred after filing of petition in the Tax Court are deductible.

III.

That said Taxpayer, being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the Court, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

/s/ GRANT G. CALHOUN,
Counsel for Petitioner.

Duly Verified.

[Endorsed]: T.C.U.S. Filed September 15, 1958.

[Title of Tax Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit, and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review heretofore filed by the Taxpayer:

- (1) The docket entries of all proceedings before the Tax Court.
- (2) Pleadings before the Tax Court, as follows:
 - (a) Petition.
 - (b) Answer.
- (3) The findings of fact and opinion of the Tax Court.
- (4) The decision of the Tax Court.
- (5) The petition for review.
- (6) The official transcript of oral testimony, pages 1 to 197 inclusive.
- (7) The exhibits introduced in evidence.
- (8) This designation of contents of record on review.

/s/ GRANT G. CALHOUN,
Attorney for Petitioners.

Acknowledgment of Service Attached.

[Endorsed]: T.C.U.S. Filed December 17, 1958.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 15, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designations of Contents of Record," including Joint Exhibits A-1, B-2, Petitioners' Exhibits 3, 4, Joint Exhibits C-5, D-6, Petitioners' Exhibits 7 thru 14, 15 (Respondent's Exhibit E, marked for identification), 16, Joint Exhibit H-17, Petitioners' Exhibits 18 thru 22, and Respondent's Exhibits F, G, I, J, and K, admitted in evidence, in the case before the Tax Court of the United States docketed at the above number and in which the petitioners in the Tax Court have filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket of my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 18th day of December, 1958.

[Seal] HOWARD P. LOCKE,

Clerk, Tax Court of the
United States.

The Tax Court of the United States

Docket No. 57535

In the Matter of:

ESTATE OF J. LESLIE VOGEL, et al.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

TRANSCRIPT OF PROCEEDINGS

Room 421, Customs Courtroom, U. S. Appraisers
Building, 630 Sansome Street, San Francisco, California. Monday, June 17, 1957.The above-entitled matter came on for hearing,
pursuant to Calendar Call, at 10:18 o'clock a.m.

Before: The Honorable Ernest H. Van Fossan.

Appearances: Grant G. Calhoun, of the law firm
of Carlson, Collins, Gordon & Bold, 1017 Macdonald
Avenue, Richmond, California, on behalf of the
Petitioner. Aaron S. Resnik, on behalf of the Re-
spondent. [1]*

Proceedings

The Clerk: Docket 57535, Estate of J. Leslie
Vogel.Mr. Calhoun: If your Honor please, I am Grant
G. Calhoun and I have here an entry of appearance.
I have been retained by the tax payers.

* Page numbers appearing at top of page of Reporter's Tran-
script of Record.

I talked to Mr. Jacobs Friday, and he will be in Washington, D. C., and he is in Washington, D. C. right now, and I have here my appearance.

Mr. Resnik: Aaron S. Resnik appearing for the Respondent.

Your Honor, we are ready to try the case.

Mr. Calhoun: We are ready for trial too, your Honor, except we have one witness who is a CPA, a vital witness, who is in Las Vegas at this moment. He is going to Los Angeles and he will fly up, and I would like to have it set for Thursday or the first part of the following week, because he has to fly up here and he's an important witness in the case.

The Court: Set for 10:00 a.m. Thursday.

The Clerk: 10:00 a.m. Thursday morning.

The Court: How much time do you estimate on that last case?

Mr. Resnik: What is your estimate of the time?

Mr. Calhoun: Oh. I have about five or six witnesses. [2] They shouldn't take too long. It's a question of status of property, whether it's community property or what, and I don't know how long the cross examination will be.

The Court: What do you think?

Mr. Resnik: We have one witness, your Honor. I hadn't anticipated that the Petitioner would have that many witnesses. We are anticipating partial stipulation of facts.

In light of this development, I would think it might take one day.

The Court: Very well.

Mr. Calhoun: We intend to stipulate to a lot of facts, but I think there are some other matters that won't take so long, except we want them in the record.

(Whereupon, the hearing in the above-entitled matter adjourned until Thursday, June 20, 1957.) [3-4]

Thursday, June 20, 1957

Proceedings

The Clerk: Court is now in session, Judge Van Fossan presiding.

Docket No. 57535, Estate of J. Leslie Vogel.

State your appearances for the record, please.

Mr. Calhoun: Grant G. Calhoun for the Petitioner.

Mr. Resnik: Aaron S. Resnik for the Respondent. We are ready for trial.

The Court: What estimate do you have for the time of trial of this case, gentlemen?

Mr. Calhoun: I think the greater part of the day, if your Honor please. I have two witnesses, attorneys, that I would like to get here about 2 o'clock, if I could have them then. When does the Court convene in the afternoon?

The Court: At 2 o'clock.

Mr. Calhoun: Well, I think it will take the greater part of the day. I have about six witnesses altogether.

The Court: You may state the issues.

Mr. Calhoun: The issue is, without going into the individual items, the question of whether certain property is separate property of the husband and wife, that is, husband separate property and the wife separate property, or whether it is community property. We have a matter of family allowance, which is a question of whether that is allowable in the particular amount of \$1,500 a month, and there is a question [7] about a boat, expenses in regard to the boat during administration, and we are not contesting that point. We are, however, the family allowance.

The principal issue, however, in the case is the question of certain property, whether wife separate property and husband separate property or community property, and, of course, if it is separate property, there are deductions involved, and otherwise it will be treated in a different manner, which is the principal item of the deficiency.

Did you want my opening statement at this time, your Honor?

The Court: Whatever brief statement you may have.

Mr. Calhoun: Well, the facts are that the Les Vogel Chevrolet Company was organized in the early thirties as a corporation, and in December of

1942 the corporation was liquidated. At that time there were two children, Les Vogel, Jr., and a daughter, and of course the husband and wife. In 1943, beginning January 1, 1943, a limited partnership was organized, in which the wife, the husband and the son, Les Vogel, Jr., each had an equal share. This went on until 1946. I think it's very pertinent that the will—we have a stipulation which we have signed—the will which was admitted to probate was executed December 13, 1946. The 1st of November 1946 the partnership was liquidated and a new corporation was formed for the business and in that corporation each of the three [8] had a one-third interest, that is, the son, the mother and the husband, had a one-third interest in the stock, that is, the stock was issued one-third each in their respective names.

Mr. Vogel had his personal attorney who prepared the will. He also had another attorney who was Secretary of the Corporation, Mr. Skinner. His personal attorneys were Mr. Partridge and Mr. O'Connell. The attorney who incorporated the business in 1946 and handled the corporate affairs, Secretary of the Corporation, was Mr. Skinner. So the attorneys who prepared the will in 1946 did not do the incorporating and the will, as I say, was signed a month after, although we will show that preparation was commenced way before the actual incorporation.

Later on, in 1948, the decedent opened a brokerage account—he had had one since 1946 in his own name, but he opened one in 1948 in his wife's name, and many purchases were made, and that is one of

the questions, whether that property is community property or separate property.

I am trying to get my times in proper order here.

Approximately in 1950 Mr. Vogel went to his personal attorneys in regard to his will and they took certain information from him, made notes and prepared a draft of a new will, one for him and one for Mrs. Vogel, and he died before the will was ever signed, in August of 1950. So the will that was probated was the 1946 will. But I believe that this subsequent [9] information has a bearing on the treatment of this property, whether it was separate property or community property.

I might say, during this period Mr. Goebel, who is present here in Court now, is the CPA who handled the tax returns for all of them. He will testify as to exactly what he did. He split things, in some instances, exactly down the middle, as community property.

That is the substance of the contentions of the Petitioners.

Mr. Resnik: I believe Mr. Calhoun's characterization of the issue is unduly broad and doesn't necessarily give the Court a true picture of the nature of the controversy. To say we are concerned generally with whether certain property is separate or community may in a broad sense outline what is involved. More specifically, the pleadings in the case relate themselves solely as to the character of certain property, not all of the property. Basically that property is the interest of the decedent and his wife

in a business known as the Les Vogel Chevrolet Company, which was a corporation at the time of the decedent's death. The pleadings set forth that that corporation had its inception in 1934 and at the time of its inception was community property of the decedent and his wife and, in the absence of any proof of transmutation, that character of the property should continue throughout the decedent's death. Furthermore, even if the Petitioner were successful [10] in showing a transmutation that would not resolve the issue in the case as to the availability of the marital deduction to the estate whose tax is the subject of the controversy. If the transmutation took place in 1942, which is one of the dates Mr. Calhoun referred to, then under the statute such transmutation would not serve as a predicate for a marital deduction. Likewise, any property which was acquired out of the business of the Vogel Chevrolet Company after April 2nd, 1948, the effective date of the 1948 Revenue Act, would not qualify for the marital deduction because the statute expressly states that conversions of property from community to separate are not recognized for marital deduction purposes if they take place after that date. Accordingly it becomes necessary for the Petitioner, if the estate is to prevail here, to show a transmutation of what is admitted to be community property at the outset and that such transmutation took place at times when the statute would recognize that a marital deduction could flow. We believe that the Petitioner can show neither of these. The evidence is fairly conclusive that what was community at its inception has remained community property through-

out. In fact, we are almost confronted in this case with a situation where a plea of estoppel might well have been raised against the taxpayers. That has not been pleaded because the evidence of it has just come forward to us. However, we do believe that that evidence should be seriously considered [11] by the Court in commanding of this estate that it consistently treat the property as the decedent and his wife treated the property during his lifetime, that is, as community property. The evidence will show that to the extent that data were available to us in the form of retained copies of tax returns, that the parties treated the property as owned in community by them and did that consistently up to the time of the death of the decedent.

We further will show that the decedent in his own will gave certain characterization to the property. We will further show that the decedent's widow, during the probate of the estate, made representations that the property was community. In fact, I believe I can state to the Court that all of the documentary evidence that the Court will have before it will not only fail to support Petitioner's contention, but will affirmatively support Respondent's determination.

With reference to the other issue, that of the family allowance, the estate claimed an allowance of \$1,500 a month for approximately 27 months. There was allowed in the statutory notice an amount of \$1,000 per month. We believe that the amount of \$1,000 a month is more than reasonable, and we believe that evidence will show that if the Respondent

made any error in that regard, he erred on the side of being liberal instead of being conservative.

The Court: You may proceed with the evidence.

Mr. Calhoun: I have here the original of a stipulation which we have signed, your Honor. There were some corrections that we interlineated, which I put on one copy.

Mr. Resnik: May I make one correction in my statement, so that the Court will not be confused? I believe that I stated the family allowance was claimed for a period of 27 months. I have been advised that the family allowance was claimed for a period of 18 months.

Mr. Calhoun: I can furnish that shortly, rather than taking the time of the Court now.

The Court: You are submitting this stipulation?

Mr. Calhoun: Submitting the stipulation, yes.

The Court: It will be received.

Mr. Calhoun: I have a witness who has just arrived here from Southern California, that is the reason I asked for the case to be set for today, and I would like to call him first if there are no objections.

The Court: You may call your witness.

Mr. Calhoun: Mr. Goebel.

LAWRENCE H. GOEBEL

was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk: State your name, if you please.

The Witness: Lawrence H. Goebel.

Direct Examination

Q. (By Mr. Calhoun): Please state your occupation. A. Certified public accountant.

Q. And how long have you been a certified public accountant? A. Since 1928.

Q. Did you have occasion to prepare tax returns for Lester Vogel or his spouse or the corporation or the partnership? A. I did.

Q. For what years, do you recall?

A. Well—

Q. Do you recall when you first started making returns for them?

A. To the best of my recollection, it's probably since 1939.

Q. And you have, then, made all their returns, during 1940 and all their returns subsequent to that date, right up to date? Is that true?

A. Yes, sir.

Q. That included the partnership returns from 1943 to the time of the incorporation in 1946?

A. Yes, it did.

(Testimony of Lawrence H. Goebel.)

Q. And you also made their personal returns, is that right? [14] A. Yes.

Q. We have stipulated that separate federal returns and state returns were filed for years 1946 and 1947 and joint returns for the years 1948, 1949 and 1950, and on all separate returns, federal and state, income from whatever source was divided evenly between the separate returns—

Mr. Resnik (interrupting): It has been stipulated, your Honor, it is the fact, we can't introduce any evidence on it. It would be inconsistent.

Mr. Calhoun: It is not inconsistent. He is going to say yes. I just want to identify it and—

Q. (By Mr. Calhoun): We have stipulated, on all separate returns, federal and state, income from whatever source was divided evenly between the separate returns.

Mr. Calhoun: I am going to withdraw my question and just say it was stipulated to that effect.

Q. (By Mr. Calhoun): It was also stipulated that this was true of dividends registered in decedent's name and his wife's, or both names jointly. It was also true of capital gain or loss on the sale of such securities. On the 1947 federal return, the capital gains on the sale of securities were described as community. On the 1947 state return, the total income reported was described as community. We have stipulated to that as a [15] fact and it is the fact, Mr. Goebel. Now, I would like to know from what source you derived your information as to the preparation of those returns.

(Testimony of Lawrence H. Goebel.)

A. Well, as to the partnership returns and the corporate returns, they were taken from the books of account. As to the personal returns of Les Vogel and his wife, Elizabeth Vogel, and Les Vogel, Jr., they were mostly taken from information submitted by the bookkeeper.

Q. By the bookkeeper, you mean?

A. The office manager.

Q. For the company?

A. For the Les Vogel Chevrolet Company.

Q. Did you personally ever discuss the nature of the returns, as to the nature of the property, whether it was community property, either with Mr. Vogel or Mrs. Vogel or their attorneys?

A. To the best of my recollection, there was no specific discussion that I recall. I more or less assumed that the income from these various sources was community income, split accordingly.

Q. From a tax standpoint, if it had been stated separately, from an income tax standpoint, would there have been a substantial difference in the income?

Mr. Resnik: I object to that question, your Honor, without having the returns before us and the nature of each [16] item before us.

The Court: I think your question is objectionable. You can lead up to that question all right.

Mr. Calhoun: I am unable to find the returns, your Honor. Mr. Jacobs, the other attorney in this case, is not available, he is in Washington, he is the attorney of record, and Mr. Goebel informed us that

(Testimony of Lawrence H. Goebel.)

Mr. Jacobs had the returns and I called Mr. Jacobs before he left and he said he didn't have them, and he is not here now, and I have no way of getting them, and I would like to make a further search. I am just interested in any one at random after '46, to go into the question of dividends, and how it was handled.

I have no further questions of Mr. Goebel.

Cross Examination

Q. (By Mr. Resnik): I believe you stated, Mr. Goebel, that you first undertook accounting work for Mr. Vogel and his family some time in 1939?

A. I believe that's the earliest date. I am not sure. It's been so long ago. But that is my recollection, the best recollection I have.

Q. What was the nature of the undertaking?

A. How do you mean that?

Q. Did they employ you as accountant, as their personal accountant, corporation accountant, accountant for all purposes? [17]

A. On their personal returns, and also on the corporation and the partnership, when it was in existence.

Q. Did you at that time discuss with Mr. Vogel the nature of his business, the nature of his assets?

A. You mean as to community or separate property and so forth?

Q. Generally, as to what he owned and what the problem would be, that you were confronted with.

A. I don't remember any specific discussion.

(Testimony of Lawrence H. Goebel.)

Undoubtedly he discussed various features of the business, but I don't remember any specific discussion along that line, as to community or separate.

Q. I didn't ask you that. When you prepared the first return for Mr. Vogel and Mrs. Vogel, did you discuss with them what you did on the return?

A. I obtained most of the information for the personal returns from their office manager.

Q. Who was the office manager?

A. Jimmy Doyle.

Q. Was Jimmy Doyle with them at the time you came?

A. I don't recollect when he went with the business. It may have been some other office manager at the start. I don't recall.

Q. With whom did you discuss the matters of preparation of the first returns? [18]

A. Well, with the office manager and—

Q. Who was the office manager?

A. I don't recall when Jimmy Doyle went with them. This has all been so long ago that I just don't recollect.

Q. Do you generally follow the practice of preparing returns for individuals without discussing the returns with them?

A. Oh, no. I discuss the returns with—mostly with Mr. Vogel I discussed them.

Q. You discussed the returns prepared for Mr. and Mrs. Vogel with them?

A. Mostly with Mr. Vogel, and the office return.

(Testimony of Lawrence H. Goebel.)

Q. And he discussed the returns, and they were filed? A. Yes.

Q. Did he review them with you?

A. Usually.

Mr. Resnik: Will you mark this, please?

The Clerk: 1942 return of Mrs. Les Vogel, Respondent's Exhibit A for identification.

Exhibit B is the 1942 return of Les Vogel, for identification.

(Respondent's Exhibits Nos. A and B, respectively, were marked for identification.)

Q. (By Mr. Resnik): I show you, Mr. Vogel, Respondent's Exhibits A and B for identification, being pencilled copies of 1942 individual [19] tax returns, federal tax return Forms 1040, one in the name of Mrs. Les Vogel and one in the name of Les Vogel, and I ask you whether they come from your files. A. Yes, they do.

Q. Are those retained copies, retained pencilled copies, of the federal tax returns filed by Mr. and Mrs. Vogel for the year 1942?

A. They appear to be.

Mr. Resnik: I offer at this time as Respondent's Exhibit A the retained copy of the 1942 individual income tax return, Form 1040, of Mrs. Les Vogel.

The Court: Retained by the Petitioner?

Mr. Resnik: Yes.

The Court: Taken from his files?

Mr. Resnik: Yes.

Mr. Calhoun: I would like to join in the offer.

Mr. Resnik: Then we offer as Exhibit A the re-

(Testimony of Lawrence H. Goebel.)

tained copy of the federal return of Mrs. Vogel and as Exhibit B the retained copy of the federal return of Les Vogel.

The Court: They will be received. Do you have any objection to making them a joint exhibit?

Mr. Resnik: No, I have no objection.

The Court: They will be marked Exhibits A-1 and B-2.

(Respondent's Exhibits Nos. A and B, heretofore marked for identification as Respondent's [20] Exhibits Nos. A and B, respectively, for identification, were received in evidence as Respondent-Petitioner's Joint Exhibits Nos. A-1 and B-2.)

Mr. Resnik: May we request at this time permission from the Court to withdraw certain exhibits at the conclusion of the hearing for purposes of briefing?

The Court: For purposes of briefing?

Mr. Resnik: Yes. We do not have other copies, those being filed.

The Court: You could make copies, could you not?

Mr. Resnik: We could if we could borrow them for the purpose of making copies.

Mr. Calhoun: I have no objection, if it is all right with the Court.

The Court: You may withdraw exhibits for the purpose of making photostatic copies, for briefing purposes.

(Testimony of Lawrence H. Goebel.)

Mr. Resnik: I ask the Clerk to mark these two exhibits for identification.

The Clerk: Respondent's Exhibit C for identification, California Individual Income Tax Return for the year 1950 of Elizabeth Vogel.

Respondent's Exhibit D for identification, California Individual Income Tax Return for the year 1950 for Les Vogel.

(Respondent's Exhibits C and D, respectively, were marked for identification.) [21]

Q. (By Mr. Resnik): I hand you, Mr. Vogel, two exhibits for identification, Respondent's C and D, being pencilled copies of California individual income tax returns of Elizabeth B. and Les Vogel for the year 1950, and ask you whether you can identify those documents as coming from your file.

A. Yes, those are—

Q. And on those returns you sought allocation on a community property basis, as you have done historically before?

A. Well, I presume so. I believe on these there is some difference as to the allocation of dividends. It's apparent from the returns here that it isn't on an equal basis, excepting the salary—let's see.

Q. Couldn't the fact of the allocation of dividends be accounted for by the date of death of the decedent as of 8/17/1950?

A. Well, we apparently haven't the detail here of what they were, so I couldn't know from looking at this. I would have to see the detail.

Q. (By Mr. Resnik): Did you assist in the

(Testimony of Lawrence H. Goebel.)

preparation of the federal and state tax return of the decedent Les Vogel? A. No, I didn't.

Mr. Resnik: I have no further questions.

Redirect Examination [22]

Q. (By Mr. Calhoun): Mr. Goebel, do you recall that for the year 1950 certain stocks, for instance Pacific Turf Club stock, some of it stood in his name, Mr. Vogel's name, and some of it stood in Mrs. Vogel's name? Do you recall that?

Mr. Resnik: I object to the question as leading and suggestive, your Honor, on its face.

Mr. Calhoun: Does this return show an itemization of anything at all?

Mr. Resnik: Which return?

Mr. Calhoun: The return that you had, the 1950 return.

Mr. Resnik: Here (indicating).

Q. (By Mr. Calhoun): Of the stocks owned by Mr. Vogel or Mrs. Vogel, or both of them, anyway, do you recall how the stocks stood in 1950, in what names, any of them?

A. Well, I am sure that there is a detail supporting these figures here, where I could show that certain dividends were shown separately as to Mr. and Mrs. Vogel and I know that that detail, I believe I could get the detail supporting that, showing segregation.

Q. You say, you can get that?

A. Well, yes, I believe so. I believe that information is available. [23]

(Testimony of Lawrence H. Goebel.)

Q. Do you think you could have it here this afternoon? A. I believe so.

Mr. Calhoun: May we have this marked for identification?

The Court: Petitioner's Exhibit 3 for identification.

(Petitioner's Exhibit 3 was marked for identification.)

Q. (By Mr. Calhoun): I hand you an accounting sheet, it purports to be, it says "Les Vogel and Elizabeth Vogel" at the top, which has been marked Petitioner's Exhibit 3 for identification purposes. Have you ever seen this before?

A. Yes. I prepared it.

Q. What is it?

A. Well, it shows the segregation of their personal incomes for the year 1950 and it shows a segregation of the dividends for the purposes of preparing this state return.

Q. You say "state return"?

A. Yes, California individual income tax returns.

Q. Is that the breakdown that you were talking about?

A. Yes, it is. That shows the 83 hundred as being—

Q. Can you explain the segregation to the Court?

A. Well, I discussed with the attorneys the allocation of these various dividends and this was the basis that they advised me it should be divided. [24]

(Testimony of Lawrence H. Goebel.)

Mr. Calhoun: I would like to have this marked as the exhibit next in order for identification.

The Clerk: Petitioner's Exhibit 4 for identification.

(Petitioner's Exhibit No. 4 was marked for identification.)

Q. (By Mr. Calhoun): I hand you what has been marked Petitioner's Exhibit 4 for identification. Have you seen that before? A. Yes.

Q. What is it?

A. These are worksheets supporting the preparation of the 1950 income tax returns and it gives the detail of dividends that were those of Les Vogel and it gives the detail of dividends assigned to Elizabeth Vogel, in the amount of \$16,600—

Q. Is that—?

A. (Continuing): Les Vogel, Jr.

Q. And this, a continuation of the same?

A. Yes.

The Court: Speak louder so I can hear you.

A. (Continuing): Those were dividends received after a certain date, that were included in the fiduciary return of Les Vogel, deceased.

Q. (By Mr. Calhoun): (Indicating.)

A. Well, these are various details of dividends of [25] Dorothea Vogel and just supporting data.

This \$16,600 was divided into two amounts, \$8,300 going on the return of Les Vogel, Sr., and \$8,300 plus this figure of \$17,276.60, the figure that went on the return of Elizabeth Vogel, in the amount of \$25,576.60.

(Testimony of Lawrence H. Goebel.)

Q. In the 1950 State of California tax return did you not segregate the dividends of Mrs. Vogel and those in the name of Les Vogel? A. Yes.

Mr. Resnik: I object, your Honor. That calls for a conclusion of what was done, a fact for the Court to determine.

The Court: Does the answer to this appear in the document that he has?

Mr. Calhoun: It shows they are separately stated, Your Honor. In other words, the detail shows the—

The Court: You may answer.

What was the question?

(Last question and answer read.)

A. Yes, I did.

Recross Examination

Q. (By Mr. Resnik): On what basis did you split the dividends that were computed for Les Vogel of \$16,600 and allocate \$8,300 to his return and then allocate the other \$8,300 to Mrs. Vogel's [26] return?

A. Well, it was on the basis that, apparently that those standing in his name were community.

Q. What about the stock standing in her name?

A. Well, it was presumed to be her separate property.

Q. By whom was it presumed?

A. I discussed this with the attorneys at the time, this particular attorney.

Q. Who were the attorneys?

(Testimony of Lawrence H. Goebel.)

A. Well, there was Mr. Skinner, the company attorney, and Mr. Partridge and Mr. O'Connell—I believe that is the name, O'Connell.

Q. Didn't you historically divide the dividends between the respective parties for prior years?

A. In past returns, it is apparently obvious that that was done.

Q. This was the first time that this system was adopted?

A. To the best of my recollection—

Q. In 1950?

A. To the best of my recollection, I believe it was, excepting on the dividends from the Les Vogel Chevrolet Company. They were always divided equally between the two, because they were from the separate stocks of each.

Q. Then, on the 1950 return, didn't you have \$15,000 of dividends from Les Vogel Chevrolet ascribable to Mr. Vogel? [27]

A. Let's see. On the '50 return?

Q. Yes.

A. Apparently so, but those were paid, I believe they were paid prior to his death.

Q. But didn't you divide—did you divide that amount of 15 thousand, one-half to Les Vogel and one-half to Mrs. Vogel?

A. That appears to be the case—of 15 thousand—

Q. Isn't that inconsistent with what you just previously said, that you split the dividends?

Mr. Calhoun: I object.

(Testimony of Lawrence H. Goebel.)

The Court: Objection sustained.

Q. (By Mr. Resnik): Didn't you in prior years ascribe the dividends from Les Vogel Chevrolet stock one-half to each?

A. Well, they each owned equal shares and the dividends from those shares were reported in their —were separate returns, were made and reported in their separate returns.

Q. Weren't separate returns made for 1950, Exhibits C and D for identification?

A. For 1950, yes, they were.

Q. Didn't you in those returns make an allocation of one-fourth and three-fourths, for the first time?

A. Well, the detail shows right here how it was divided.

Q. I am asking you what you did. Will you please answer [28] the question?

A. I don't recall any one-fourth or three-fourths. I included the dividends, the 15 thousand, it shows right here on the worksheet, which apparently were paid prior to his death to Les Vogel, and the 15 thousand on the stock in the name of Elizabeth Vogel were shown as going to her, on the schedule here.

Q. On the 1950 return of Les Vogel—

A. Here is his return here (indicating).

Q. Yes. A. Les Vogel, deceased.

Q. Exhibit D for identification, you show dividends of only \$8,300. A. Yes.

Q. Whereas you have just testified that Mr.

(Testimony of Lawrence H. Goebel.)

Vogel prior to his death received at least \$15,000 of dividends from the Vogel Chevrolet Company.

A. That is correct.

Q. How do you reconcile the reporting of \$8,300 of dividends for Les Vogel on his return, Exhibit D, when you have just testified that he received not less than \$15,000 from one source alone?

A. The 15 thousand was from the Les Vogel Chevrolet Company. There were other small dividends bringing the total up to \$16,600, \$8,300 of which went on the return of Les Vogel and \$8,300 was put on the return of Elizabeth Vogel. [29]

Q. Didn't you say that in prior years the dividends that came to Les Vogel because of the shares of stock that stood in his name were reported by him, that the dividends on the Les Vogel Chevrolet stock, owned by Mr. Vogel and Mrs. Vogel were split down the middle? Isn't that what you testified to?

A. Well, they each got dividends equivalent to the shares of stock owned, whichever way you want to put it.

Q. How was that reported?

A. Half was put in his return from his share and half was put in her return.

Q. But in 1950 you didn't do that, did you?

A. No, we didn't.

Q. Do you have any explanation of what happened, to make a change?

A. Well, that was done, as I said before, on the advice of the attorneys.

(Testimony of Lawrence H. Goebel.)

Q. Did you discuss with the attorneys the handling of the tax matters for prior years?

A. No. I don't remember specifically discussing tax matters with the attorneys in prior years. Probably it was brought about by the death of Les Vogel.

Q. Did you discuss with Mrs. Vogel the filing of the 1950 return?

A. I don't recall. I don't think there was—I really [30] don't recall.

Q. Did you discuss with her the filing of any of her returns for prior years?

A. Probably very briefly. I don't recall. Most of my discussion was with Les Vogel, Sr., and the office manager employed at the particular time with the Les Vogel Chevrolet Company.

Mr. Resnik: I have no further questions at this time, your Honor.

Further Redirect Examination

Q. (By Mr. Calhoun): Mr. Resnik questioned you with regard to splitting some of the income. Isn't it true that from the period 1943 through the partnership, which was terminated October 31, 1946, that you prepared partnership returns?

A. Yes.

Q. For that partnership?

A. Yes, I prepared them from the partnership books.

Q. And the individual income tax returns you prepared took the income that should be allocated

(Testimony of Lawrence H. Goebel.)

to each one of the individuals from the partnership returns, is that not true?

Mr. Resnik: The best evidence would be the returns themselves or, secondly, the books and records of the partnership. I object.

The Court: You may answer. [31]

A. The partnership returns, as I recall, showed the distributed shares, one-third to Les Vogel, one-third to Elizabeth Vogel and one-third to Les Vogel, Jr., and those amounts, as I recall, were carried into the individual returns on that basis.

Q. (By Mr. Calhoun): And those amounts would necessarily be even, would they not, with the one-third interest?

Mr. Resnik: I object. I submit again, the best evidence would be the books and records of the organization.

The Court: I sustain the objection to that question.

Mr. Calhoun: I have no further questions.

The Court: You are excused.

(Witness excused.)

Mr. Calhoun: I would like to offer in evidence the exhibits marked for identification as Nos. 3 and 4.

The Court: They may be received in evidence as Exhibits 3 and 4.

(Petitioner's Exhibits Nos. 3 and 4 were received in evidence.)

Mr. Calhoun: I believe these were together.

The Clerk: They were both together, yes.

Mr. Calhoun: I would like to offer these returns.

The Court: What are they?

Mr. Calhoun: These are the California individual income tax returns for the year 1950. They have been marked [32] Respondent's Exhibits C and D for identification. I would like to offer them in evidence.

The Court: They will be received.

The Clerk: Shall I make that a Petitioner's exhibit, your Honor?

The Court: Do you want to make this a joint exhibit, Mr. Resnik?

Mr. Resnik: Yes, they can be joint exhibits, your Honor, the returns.

The Clerk: That will be C-5 and D-6.

(Respondent's Exhibits Nos. C and D, previously marked for identification, were received in evidence as Respondent-Petitioner's Exhibits C-5 and D-6.)

Mr. Calhoun: I would like to call Mr. Les Vogel, Jr.

J. LESLIE VOGEL, JR.

was called as a witness on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record.

The Witness: J. Leslie Vogel, Jr.

Direct Examination

Q. (By Mr. Calhoun): Mr. Vogel, you recall your father's Chevrolet business, I assume, as long

(Testimony of J. Leslie Vogel, Jr.)

as you can remember? A. Yes, sir. [33]

Q. Do you recall when you first went into the business? A. 1938.

Q. When you first went into the business?

A. Yes.

Q. What did you do at that time?

A. I attended first a school for dealers' sons conducted by Chevrolet Motor Company and upon my return I joined the sales force.

Q. When did you first acquire an interest in the business and how was that acquired?

A. Well, I started buying into the business when it became a partnership in 1943.

Q. What did you do then?

A. Well, I was in the Army then, but in discussions with my father it was decided that he would, and my mother would, sell me a part of their interest, so that I would become a third-owner of the business.

Q. And do you recall when a partnership was set up?

A. Well, when the partnership was set up I was in the Army, in Italy.

Q. And there was a limited partnership agreement, was there not? A. Yes, sir.

Q. Effective as of January 1, 1943?

Mr. Resnik: I object. The questions are leading, [34] your Honor.

Mr. Calhoun: We have stipulated to it.

Mr. Resnik: Well, if the matters are stipulated, I object to their being repeated.

(Testimony of J. Leslie Vogel, Jr.)

Mr. Calhoun: I just want to refresh his memory.

The Court: Proceed.

A. To the best of my recollection, it was '43.

Q. (By Mr. Calhoun): What was your interest in the business?

A. Well, I was privileged to be able to buy the third interest in the business out of earnings.

Q. How did you buy that, what did you do, to evidence that you owed the money for a third interest in the business?

A. I signed a note for it.

Q. You signed a note for it? A. Yes.

Q. To whom?

A. One to my father and one to my mother.

Q. Did you have separate notes?

A. I can't answer that.

Q. When you came back from the service—well, do you recall when you came back?

A. July 27, 1945.

Q. And you then became active in the business, is that true? [35] A. Immediately.

Q. What did you do, in your active participation in the business?

A. Well, I became a—I was a paid-up third owner of the business without having had to contribute any service, because it happened during the war that the obligation had been satisfied. I came back, we didn't have new automobiles until November of '45 and they weren't being sold until approximately May of 1946, so I was able to work

(Testimony of J. Leslie Vogel, Jr.)

in different departments of the business, in selling used cars and just general management of the business, learning the management aspect before——

Q. You actively participated in the business itself? A. Yes.

Q. And you became a general partner, did you not? A. In 1945.

Q. Then, do you remember when the partnership was dissolved?

A. I don't recall the date.

Q. Do you remember when the new corporation was formed, what year? A. 1946.

Q. And when the new corporation was formed what was your stock ownership?

A. One-third.

Q. And what was your father's stock ownership?

A. One-third.

Q. What was your mother's stock ownership?

A. One-third.

Q. And was this stock actually issued in their names? A. Yes.

Q. Individually? A. Yes.

Q. Were you familiar with your father's and your mother's brokerage business?

A. Somewhat.

Q. Do you recall that your father established a brokerage account with Dean Witter in 1946?

Mr. Resnik: I object; the question is leading.

Mr. Calhoun: It is stipulated, your Honor.

The Court: Very well.

Mr. Calhoun: I am just referring to it.

(Testimony of J. Leslie Vogel, Jr.)

The Court: Proceed.

Q. (By Mr. Calhoun): Do you recall that your mother established a brokerage account at Dean Witter's in 1948? A. Is that a fact?

Q. It's been stipulated. Do you recall it? I am asking you—

A. Well, I know that the three of us did business with Dean Witter Company. [37]

Q. Did you have your own account there?

A. Yes, sir.

Mr. Calhoun: For the moment I am going to change the subject and discuss the family allowance. I am just wondering whether your Honor would rather have Mr. Vogel, Jr., cross-examined on the points that I have brought out or rather have me present it all on the family allowance now. I don't like to have them confused.

The Court: Do you have any particular preference?

Mr. Resnik: I have no particular preference, your Honor.

The Court: Go ahead.

Q. (By Mr. Calhoun): Do you recall the date of your father's death? A. August 16, 1950.

Q. Where were you living then?

A. With my mother and father and sister.

Q. Where was that?

A. 369 Marina Boulevard.

Q. What type of a house is that?

A. A very nice home.

Q. What kind of a house?

(Testimony of J. Leslie Vogel, Jr.)

A. Three-story detached dwelling.

Q. Did you have any servants?

A. Yes, sir. [38]

Q. What did you have?

A. We had a housekeeper.

Q. Were you familiar with the family expenses to run the home?

A. To the extent that neither my sister nor myself ever contributed anything to it.

Q. In other words, you were just a—

A. We were guests.

Q. A sort of a guest at your own home?

A. Yes.

Q. Did your mother entertain much, do you recall?

A. An average amount, regularly.

The Court: What is an average amount?

The Witness: I would say at least once a month, having guests in.

Q. (By Mr. Calhoun): The home was paid for, was it not?

A. To the best of my knowledge.

Q. Have you any idea what the taxes were on that home?

A. I couldn't answer that.

Q. Are you familiar at all with the grocery bills or anything of that nature?

A. No, sir.

Q. What section of town, how would you describe the section of town where that home was?

A. Above average income. [39]

Q. Above-average income?

A. Yes. I would say a wealthy neighborhood.

Q. And you have lived at your home for how long at that place?

(Testimony of J. Leslie Vogel, Jr.)

A. We went there in 1941.

Q. If your mother received a family allowance of \$1,500 a month, do you think you would be in a position to say whether or not that was a reasonable sum for that period to run the home and everything, feed you all, pay the bills and her own living expenses?

A. Well, that was determined by, as having been less than my father's salary.

Q. What was your father's salary at that time?

A. As I recall, it was \$1,800 a month.

Q. Of course, he had dividends besides that?

A. Well, that is from investments. That was his salary.

Q. His salary was about \$1,800 a month?

A. Yes.

Q. Did most of his salary go into maintaining the home, if you know?

Mr. Resnik: I object, your Honor.

Mr. Calhoun: I asked him if he knew. If he knows, he may answer it, may he not, your Honor?

The Court: If he knows, he may answer.

Do you know?

The Witness: What was the question? [40]

(Last question read.)

A. I would say yes.

Mr. Calhoun: I have no further questions.

Cross Examination

Q. (By Mr. Resnik): What is your age, Mr. Vogel? A. Thirty-seven.

(Testimony of J. Leslie Vogel, Jr.)

Q. Was your sister over 21 in 1950?

A. Yes.

Q. At the time, hadn't she been married at that time? A. She has never married.

Q. She was over 21 at that time? A. Yes.

Q. And, as I understand it, there were four of you, four members of the family in the household, together with one servant? A. Yes.

Q. Prior to your father's death? A. Yes.

Q. And after your father's death you, your sister and your mother continued to occupy the house?

A. Together with a servant.

Q. Together with a servant. And you made no contribution before your father's death to the makings of the home? A. No, sir. [41]

Q. And you made none after? A. No, sir.

Q. Your sister made none before?

A. Or after.

Q. You stated that you first took an active interest in the Vogel Chevrolet business sometime in 1938? A. Yes, sir.

Q. How old were you at that time?

A. I was born in 1919. I would have been 19 years old then.

Q. I think your arithmetic is correct.

As I gather it, your father was the dominant figure in the business at all times? A. Yes.

Q. Did he continue to be active in the business up until the time of his death? A. No, sir.

Q. You say, he did not? A. No, sir.

Q. When did his activity in the business cease?

(Testimony of J. Leslie Vogel, Jr.)

A. He was in a sanitarium from just prior to November—or it would be just prior to Thanksgiving, the year before his death. He had been home for a year. I would have to say he was home from the time of his discharge from the sanitarium. I don't know just exactly how long. [42]

Q. Did your mother take any active interest in the business? A. No, sir.

Q. When you bought into the business, actually during the period that the note or notes which you gave to purchase your interest in the business, you were away in the Army, were you not?

A. Yes, sir.

Q. And part of the earnings were attributed to you and then were used to discharge the note, or the obligation you had to your parents?

A. That is right.

Q. With whom did you discuss the arrangement as to your acquiring an interest in the business in 1942?

A. We have always been a very closely knit family and to say it was discussed at the business or at home would be hard to say.

Q. With whom did you discuss it?

A. With my mother and father.

Mr. Resnik: I have no further questions at this time.

Redirect Examination

Q. (By Mr. Calhoun): Did you discuss with your mother and father any plan for the business?

(Testimony of J. Leslie Vogel, Jr.)

A. What did you say? What does that——?

Q. For the disposition of the business?

A. Disposition of the business?

Q. Yes. In case of death or anything like that, did you ever discuss it?

A. Well, it was always hoped that it would be a continuing business. A Chevrolet franchise was only issued for one year, and they have what they term "Paragraph Third" of the selling agreement, wherein my father was the—they will only do business with one individual, be it a partnership or a corporation, their contract is only with one person, and it wasn't until 1939, it wasn't—I can't give you the date, but it was just prior to my father's passing that I was named on the contract, I think it was about two years before he passed away.

Q. Did you ever discuss with your father why the stock would be issued one-third each to you and your mother and your father?

A. Well, he told me that——

Mr. Resnik: I object, your Honor. The answer is obviously hearsay as to the Government in this proceeding if they are seeking to introduce it to prove the truth of the statements made by the decedent at this time.

Mr. Calhoun: I just asked him if he had ever discussed it.

Mr. Resnik: That can be answered yes or no.

A. We did discuss it.

Q. (By Mr. Calhoun): What did you discuss?

A. The——

(Testimony of J. Leslie Vogel, Jr.)

Q. As to what extent did you discuss it?

A. The terms of his will were designed to provide for my sister, he having figured that during his lifetime he had provided for me and my mother.

Mr. Resnik: I move that the answer be stricken as being hearsay.

The Court: The answer may stand.

Is there anything further?

Mr. Calhoun: There is one item I wanted to bring up with this witness which I just thought of now.

Further Direct Examination

Q. (By Mr. Calhoun): On the 2nd page of the 90-day letter—

Mr. Calhoun: Which, I assume, is already in the pleadings—is that not right, your Honor, or need it be introduced? A copy of it, I think, is supposed to be—

The Court: There is a copy attached.

The Clerk: It seems to be a photostatic copy of the 90-day letter and the statement attached to it.

Q. (By Mr. Calhoun): On page 2 there are certain stocks listed under [45] Schedule F (b). Can you identify what stocks were your mother's and which stocks on page 5 of the 90-day letter were your father's?

Mr. Resnik: I object, your Honor.

Q. (By Mr. Calhoun): If you know.

Mr. Resnik: The answer calls for a conclusion and opinion of the witness. He has not been quali-

(Testimony of J. Leslie Vogel, Jr.)

fied in that regard. Furthermore, if he is asked to answer as to the names in which the stock certificates were held, the best evidence of that would be the certificates themselves and not the testimony of a party whose name did not even appear on the certificates.

The Court: To what are you asking him to refer?

Mr. Calhoun: I am referring to those particular paragraphs of the 90-day letter. There are stocks listed there and I am asking him if he knows which ones were in the name of his mother.

The Court: He may answer.

A. I have sitting with my mother some records of my father's stock transactions and I know that from this one, under Item 3 of the Olympic Club privilege, that would belong to my father;

That items 1, 2 and 3 belonged to my father;

The four Pacific Turf Club stocks belonged to my [46] mother, and there were four shares that stood in my father's name;

My father did not own any PG&E redeemable first preferred, or any Bank of America or any PG&E common or any stock in the Leslie Financing Company;

And that the Anse Vista Apartment House property is my mother's.

Q. (By Mr. Calhoun): Do you recall how that Anse Vista property was acquired?

Mr. Resnik: If you know.

Mr. Calhoun: I am asking him if he recalls.

(Testimony of J. Leslie Vogel, Jr.)

A. My mother purchased it from a contractor in San Francisco by the name of Arthur Hardy.

Q. (By Mr. Calhoun): Do you know what funds were used, if you know, to purchase this property?

A. I presume they were her own funds.

Mr. Resnik: I move that that be stricken.

The Court: It may be stricken.

Mrs. J. Leslie Vogel, Sr.: Well, it is my money.

The Court: Just a moment. You are not on the witness stand and you will remain silent.

Q. (By Mr. Calhoun): What records do you have in regard to the brokerage [47] transactions?

A. He carried all of those transactions from 1949, he purchased—

Mr. Resnik (interrupting): You were asked what records he had. Will you please answer that question?

The Witness: I have the statements from the brokerage companies.

Q. (By Mr. Calhoun): Can you identify any of these stocks listed on the 90-day letter and the return through these statements?

A. Where is that?

This doesn't give the amounts of shares, but Item 1 is Transamerica Corporation.

The Court: Item 1 of what?

The Witness: Page 5.

Mr. Calhoun: Page 5, Subparagraph (g).

The Court: Of what?

Mr. Calhoun: The 90-day letter.

A. (Continuing) Here is a statement dated De-

(Testimony of J. Leslie Vogel, Jr.)

ember 30, 1949, from Dean Witter & Company, showing that he had two hundred shares of Greyhound Corporation—100 shares of Greyhound—

Mr. Resnik: If your Honor please, I submit that this examination is improper. The witness is seeking to refresh his recollection on matters of which he has no present [49] knowledge from memoranda that were not prepared by him, on matters that were not in his custody.

Mr. Calhoun: I think the objection is probably well taken, your Honor, and this noon I would like to go over these with him, and recall the witness later on, to go over that phase of the examination, to go over these matters. I think, as your Honor knows, when this case first came up, that I was called into the case last week, the attorney of record is now in Washington, D. C., and I have been working night and day to get all the facts and to assemble them in the proper order so that I can present it the best I can to your Honor.

The Court: You may do that.

Mr. Calhoun: Thank you.

That is all I have right now.

Do you have any questions?

Mr. Resnik: Yes.

Cross Examination

Q. (By Mr. Resnik): Do you know where your father obtained the funds with which to acquire any of the stock that stood in his name?

(Testimony of J. Leslie Vogel, Jr.)

A. From his interest in the partnership and its ultimate dissolution. There was an overage that allowed for investments and that is when he started investing the most in the market.

Q. Upon the dissolution of the partnership, wasn't there [50] actually a shortage and didn't all of you have to put in more money, into the corporation that was started, that was restarted in 1946?

A. Well, the amount of money that was put into the corporation was \$50,000 apiece. I do not recall the amount of money that was necessary to be put in, but the partnership did make money and we all had money from the partnership earnings. It was never a problem to purchase stocks or establish the corporation. It was—

Q. Did you draw the money out of the corporation or did it remain as a liability of the corporation to you? A. At what time?

Q. At the time of its formation and immediately thereafter.

Mr. Calhoun: That is stipulated.

A. Well, it was a partnership.

Mr. Calhoun: It is stipulated, your Honor, as to what happened.

Mr. Resnik: If your Honor please, the apparent testimony of the witness is contrary to the stipulation. He has testified that there was money available at the time of the dissolution of the partnership, whereas in fact it appears that it was neces-

(Testimony of J. Leslie Vogel, Jr.)

sary that additional resources be placed in the corporation at that time.

Mr. Calhoun: No, it isn't. That is a conclusion [51] that is not warranted by the evidence, the stipulation or anything else.

The Court: Where do you find that in the stipulation?

Mr. Resnik: I am referring now, your Honor, to page 3 of the stipulation, paragraphs 9, 10 and 11.

The Court: What is the question which you are objecting to?

Mr. Calhoun: I am saying that this has been stipulated to, that, first, when the partnership closed December 31, 1942, at midnight, the accounts payable—where it says "Accounts Payable", that is actually the drawing account or the account of the partners with the business, and it says "Partners' Capital", under that \$32,709.22 for Les Vogel, and the same, with two cents' difference, for the other two. And then they formed a new corporation and they wanted to make the capital stock \$150,000, so it is stipulated below, "In order to provide the \$50,000 payment by such partner for the stock issued, the amounts necessary to bring the partnership capital accounts up to \$50,000 were taken from the accounts payable account."

The Court: "Such" has been changed to "each" in this copy.

Mr. Resnik: That is correct, each.

Mr. Calhoun: Yes; it hasn't been corrected in

(Testimony of J. Leslie Vogel, Jr.)

this copy. Let me get my yellow copy. "In order to provide the [52] \$50,000 payment by each partner for the stock issued, the amounts necessary to bring the partnership capital accounts up to \$50,000 were taken from the accounts payable account."

In other words, the company owed them as an account payable this money above and all they did was to take the capital account and took that difference, increased the capital to \$50,000 each. Now, that doesn't mean that they didn't have money or did have money. Counsel is making an inference there that isn't warranted by the evidence or anything else, and so stating it.

Mr. Resnik: I am seeking to avoid making any inferences. I asked the question of the witness and Mr. Calhoun says it is stipulated.

The Court: What was the question?

Mr. Resnik: I asked the witness if there actually wasn't a shortage at the time of incorporation and didn't all the partners, former partners, have to put more money into the corporation that was restarted in 1946. The witness stated they put in \$50,000 apiece. I asked him if the money was drawn out of the corporation or if it remained as a liability of the corporation to them, at the time of the formation and immediately thereafter.

Mr. Calhoun: Well, they transferred the accounts payable, which was actually a share of the profits which had not been transferred to the stated capital, so the capital [53] account, and he says was it necessary to do it. Well, it says here, "In order

(Testimony of J. Leslie Vogel, Jr.)

to provide the \$50,000 payment by each partner for the stock issued, the amounts necessary to bring the partnership capital accounts up to \$50,000 were taken from the accounts payable account." So it is stipulated to.

The Court: I think the stipulation closes the point.

Q. (By Mr. Resnik): You gave some testimony, Mr. Vogel, with reference to the Anse Vista Apartment property, which, I believe you testified, was in the name of your mother. A. Yes, sir.

Q. Do you know where she obtained the funds to acquire that?

A. From the Les Vogel Chevrolet Company, the earnings of the Les Vogel Chevrolet Company.

Q. Do you recall attending a meeting in the office of Mr. Jacobs years ago at which Mr. Kubik was present—Mr. Kubik, who is sitting at my right?

A. Yes, sir.

Q. Do you recall that at that time your mother was present? A. Yes.

Q. Do you recall that at that time Mr. Kubik asked certain questions of your mother?

A. Yes. [54]

Q. He asked her with reference to the Anse Vista Apartment property, did he not?

A. Yes.

Q. Didn't she reply at that time, "That was always Daddy's," referring to your late father?

A. What "was always Daddy's"?

Q. The Anse Vista Apartment property.

(Testimony of J. Leslie Vogel, Jr.)

A. I wouldn't answer to what was said then.
If Mr. Kubik——

Q. Do you recall such a statement being made by her? A. If it was made, it was wrong.

Q. Do you recall such statement being made?

A. No, I don't.

Q. Do you recall that after that statement was made you said to your mother, "Keep quiet. You're talking too much"? A. No, sir.

Q. Do you know the time, dates, when the stock that you say was in your mother's name was acquired? A. The dates that——?

Q. Yes. A. I can find it out.

Q. Do you know? A. No.

Q. Do you know who placed the orders for those specific shares of stock? [55] A. She did.

Q. How do you know she placed the orders?

A. Because she was in the office when Bob Fredericks called my dad and told him that there was on offering of the first preferred PG&E coming on the market.

Q. I didn't ask you about first preferred PG&E. I asked you about all the stock.

A. I am making a specific reference to a stock that I know of——

Mr. Calhoun: I object to the form of the question. Generally, all the stock, that covers over a long period of time. It's like saying every day you ride down in the streetcar or something. Maybe you don't some days. It is too broad to suit me.

Mr. Resnik: That was precisely the form of my

(Testimony of J. Leslie Vogel, Jr.)

objection, if your Honor please, when this witness testified that he knew that certain stock stood in the name of his mother or belonged to his mother, in the most general terms possible. I am pursuing that same line of inquiry, since your Honor overruled my objection at that time, to test this witness' knowledge of those facts.

The Court: Proceed.

Read the question.

Mr. Resnik: It may be more convenient if I pursue another question at this time, although he did interrupt the [56] witness.

Q. (By Mr. Resnik): Do you know who placed the order for the Pacific Club stock?

A. Yes, sir.

Q. Who placed that order? A. I did.

Q. How many shares did you order at that time?

A. Whatever was available.

Q. In whose names did you purchase that stock?

A. My name, my mother's name and my father's name.

Q. When was that order placed?

A. I can't give you the date.

Q. With whom was it placed?

A. Various brokers, in an endeavor to acquire four shares each, because there was a distinct advantage in having four shares of the stock.

Q. Do you know who placed the order for the Leslie Financing Company stock?

A. We formed the company, my mother, sister and I, at the suggestion of my father.

(Testimony of J. Leslie Vogel, Jr.)

Q. When was the company formed?

A. '48 or '49.

Q. What was the nature of its business?

A. To finance what we called "prime paper".

Q. Who were its officers?

A. I was the president, my mother was named vice president, B. G. Skinner as secretary, and James Doyle as treasurer.

Q. What service did your mother render to the company? A. None. She financed it partly.

Q. What was the initial capital of the company?

A. Thirty thousand dollars; ten thousand each.

Q. Where did your sister obtain her funds to make her investment? A. I do not know.

Q. Where did your mother obtain her funds to make her investment, if you know?

A. Previous investments.

Q. But you don't know where your sister got her money? A. No, sir.

Q. Did she have previous investments?

A. I do not know.

Q. You weren't familiar with what your sister was doing?

A. I don't know whether my father or mother gave her any money during his lifetime.

Q. Who placed the order for the Pacific Gas & Electric common stock? A. I do not know.

Q. When was it ordered?

A. I don't know.

Q. Who placed the order for the Bank of America stock? [58] A. I don't know.

(Testimony of J. Leslie Vogel, Jr.)

Q. When was it ordered?

A. I don't know.

Q. Do you know what salary your father drew from the corporation, beginning in 1946 until his death?

A. Well, I looked that up yesterday and in 1948—the other records are at the office, but the ready, available ones were January 1948, he was drawing \$1,500 a month, and in February it was raised to \$1,800 a month until he passed away.

Q. In addition, didn't he get substantial bonuses also? A. Yes, sir.

Q. So that his salary in each of the years was in excess of \$30,000, salary and bonus was in excess of \$30,000?

A. I believe he received 50 per cent of his salary as bonus.

Mr. Resnik: I have no further questions at this time.

The Court: Do you have any further questions, Mr. Calhoun?

Redirect Examination

Q. (By Mr. Calhoun): Has your mother had much business experience, do you know?

A. I would say none.

Q. She took no part at all in management of the Les [59] Vogel Chevrolet? A. No, sir.

Q. There are certain bank accounts stipulated to—

Mr. Resnik (interrupting): If your Honor

(Testimony of J. Leslie Vogel, Jr.)

please, I believe this is going beyond the scope of cross-examination, what would properly be redirect examination.

Mr. Calhoun: I agree, it is not proper redirect, but I had the thought of it right now, I believe he is the best one to identify it.

The Court: You may ask him.

Q. (By Mr. Calhoun): There were certain bank accounts in the Marina Bank, there was an account, savings account, No. 3139 in the Bank of America, Marina Branch, in the name of Elizabeth Vogel. Were you familiar with that savings account?

A. I knew that she had an account in that bank.

Q. There was also a savings account, No. 1421, in the Polk-Van Ness Branch of the B of A, in the name of Les or Elizabeth L. Were you familiar with that account at all?

A. I knew my father had an account there.

Q. There was an account in the name of J. Les or Elizabeth Vogel, a savings account, at Branch 253 of the Bank of America, Account No. 4214. Do you know what branch 253 was?

A. 253 was Twentieth and Irving.

Q. Is there such a bank there now? [60]

A. It's now 21st and Irving.

Q. And—

A. That is in the Sunset District.

Q. In the Sunset? A. Yes.

Q. They moved, is that it? A. Yes.

Q. There was a checking account in the Marina Branch of the Bank of America in the name of Les

(Testimony of J. Leslie Vogel, Jr.)

or Elizabeth Vogel. Are you familiar with that account?

A. I know that that was my mother's account.

Q. Did your mother write checks?

A. Yes.

Mr. Calhoun: I have no further questions.

Mr. Resnik: No further questions.

The Court: You are excused.

(Witness excused.)

Mr. Calhoun: Mrs. Vogel, please.

ELIZABETH S. VOGEL

a witness called by and on behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name?

The Witness: Elizabeth Vogel.

Direct Examination

Q. (By Mr. Calhoun): You are the widow of Les Vogel, Sr., is that correct? A. Yes.

Q. Do you recall when your husband first entered into the Chevrolet business? A. Yes.

Q. That was in the thirties, was it not?

A. Yes.

Q. Was it true that business was kind of rough during that period? A. Yes.

Q. And do you recall in 1943, January of 1943, when you and your husband and your boy, Les, Junior, formed a limited partnership?

A. Yes, I do.

(Testimony of Elizabeth S. Vogel.)

Mr. Resnik: The question is leading and—

Mr. Calhoun: It has been stipulated to, your Honor.

Mr. Resnik: It is not stipulated to in those terms.

The Court: She may answer.

A. Yes, I do.

Q. (By Mr. Calhoun): Do you recall when the business was incorporated in November, the 1st of November 1946?

A. Yes. I don't know what year it was, but I remember, we had— [62] .

Q. And at that time you were issued \$50,000 worth of stock, isn't that true? A. Yes.

Q. And do you have that stock?

A. Down at the shop.

Q. It is down at the shop? A. Yes.

Q. Now, there are certain securities which apparently stand in your name, isn't that true?

A. Yes.

Q. Do you have those securities? A. Yes.

Q. Are they available? A. Yes.

The Court: Speak a little louder, please.

The Witness: Yes.

Mr. Calhoun: Just a moment, your Honor.

I have here—if I may take the time out rather than call these people—I have a letter dated June 13, 1957—

The Court: Are you speaking to the Court or to Mr. Resnik?

(Testimony of Elizabeth S. Vogel.)

Mr. Calhoun: I am speaking to the Court and counsel, if I may.

The Court: Speak a little louder.

Mr. Calhoun: I have a letter from the Pacific Gas & [63] Electric Company, dated June 13, 1957, addressed to Mrs. Elizabeth Sue M. Vogel. This letter shows the holdings and acquisition dates and so forth.

And I also have the same for the Bank of America.

Mr. Resnik: This covers matters that are not before us at all.

Mr. Calhoun: Well, it covers all their transactions, if you go back.

Mr. Resnik: You had better strike out those that aren't here involved, because they would just be misleading.

Mr. Calhoun: Obviously anything after the date of death would not be relevant, but it's a complete transcript.

Mr. Resnik: If your Honor please, there has been submitted to us for the first time correspondence from Pacific Gas & Electric Company and correspondence from Bank of America, showing certificate numbers, dates of acquisition and names in which certain securities were held. To the extent that the letters show the certificates, dates of acquisition and names of those securities prior to the date of death of the decedent in August of 1950, we would have no objection to having the Court receive the information. We think that it would

(Testimony of Elizabeth S. Vogel.)

be misleading to have the matters before the Court relating to transactions after death because they are not involved in this proceeding at all. With that caveat and that explanation, we have no objection. [64]

The Court: What are you offering?

Mr. Calhoun: I am offering two letters. Rather than subpoenaeing the PG&E people and the Bank of America people, I am offering letters in which they have given a transcript of the accounts—

The Court: Do you agree with Mr. Resnik's statement?

Mr. Calhoun: Yes, that is true, because some of these show after death and, of course, I have no control over the—

The Court: They will be received as Exhibit 7 for the Petitioner.

The Clerk: A letter dated June 13, 1957, from the Pacific Gas & Electric Company, Petitioner's Exhibit No. 7.

A letter dated June 13, 1957, from the Bank of America is admitted in evidence as Petitioner's Exhibit No. 8.

(Petitioner's Exhibits Nos. 7 and 8, respectively, were marked for identification and received in evidence.)

The Court: Proceed.

Mr. Calhoun: If your Honor please, this noon I am going over the items as to the stock accounts of Mrs. Vogel and Mr. Vogel. I don't have those ready to present to her at this time. I would like

(Testimony of Elizabeth S. Vogel.)
to take up out of order, break the continuity of
it, the family allowance at this time, if I may.

The Court: Proceed. [65]

Q. (By Mr. Calhoun): Mrs. Vogel, you received
certain checks from the estate of your husband for
family allowance, did you not? A. Yes.

Mr. Calhoun: I have a petition for family allow-
ance, a copy, Probate No. 118643, in the matter of
the estate of J. Leslie Vogel, which has been filed.

The Court: And you want to offer it?

Mr. Calhoun: I want to offer this copy in evi-
dence.

The Court: Any objection.

Mr. Resnik: No objection.

The Court: It will be marked Exhibit No. 9.

(Petitioner's Exhibit No. 9 was marked for
identification, and was received in evidence.)

Mr. Calhoun: And I have also the order for fam-
ily allowance in the same matter, in response to the
petition.

The Clerk: Petitioner's Exhibit No. 10.

(Petitioner's Exhibit No. 10 was marked for
identification and received in evidence.)

Q. (By Mr. Calhoun): On September 7, 1950,
there was filed in the Probate of your husband's
estate a petition, verified petition, verified by you,
for a family allowance, in which it is stated that you
were the surviving widow of J. Leslie Vogel, the
decedent above-named, who died on the 16th day of
August 1950, that said decedent left no minor chil-
dren him surviving, that [66] the petition for the

(Testimony of Elizabeth S. Vogel.)

probate of the will of the said decedent is presently on file and the hearing of the same has not been had, that no inventory has been yet filed, that petitioner in the lifetime of her said husband was dependent upon him for her support and maintenance, and decedent did support and maintain petitioner during his lifetime and the estate of said decedent is amply able to provide a family allowance commensurate with the estate of said decedent and his station in life, and that the sum of \$1,500 per month is a reasonable amount for that purpose; and the Court entered an order granting the amount of \$1,500 per month to you.

Mr. Calhoun: I would like to have the checks made payable to Elizabeth Vogel from the estate of J. Leslie Vogel, covering the family allowance.

Mr. Resnik: We don't know that.

Mr. Calhoun: Covering the amount of \$1,500, \$3,000, \$4,500, \$4,500, and \$13,500, the first one being the one in the amount of \$13,500. I would like to have these marked for identification purposes.

The Clerk: Petitioner's Exhibit 11 for identification.

(Petitioner's Exhibit No. 11 was marked for identification.)

Mr. Resnik: If the Court please, may we have the number of checks noted, so we can make a record of it?

The Clerk: Five checks. [67]

Q. (By Mr. Calhoun): Mrs. Vogel, I hand you five checks, it says, "Pay to the order of Elizabeth

(Testimony of Elizabeth S. Vogel.)

S. Vogel," and they are signed by the estate of J. Leslie Vogel, and in varying amounts, and I ask you whether or not, whether these were or were not paid to you by the estate for family allowance, if you know.

A. This one, that doesn't say.

Q. That was cancelled. Is that your signature?

A. Yes, it is.

Q. Those were? A. Yes.

Q. Now—

A. Why wasn't this signed down here?

Q. They were paid to you, were they not? You endorsed this, and they went through the bank, is that correct? A. Yes.

Q. I will ask you if you feel that the sum of \$1,500 was a reasonable amount required to maintain your family and yourself in the status that you had been accustomed to prior to the decease of your husband. A. Yes.

Mr. Calhoun: I will offer these checks in evidence.

The Court: They will be received.

(Petitioner's Exhibit No. 11 was received in evidence.) [68]

Q. (By Mr. Calhoun): Where was your home located? A. 369 Marina Boulevard.

Q. How large a home was it?

A. Fourteen rooms.

Q. Fourteen rooms? A. Yes.

Q. And you required a maid? A. Yes.

Q. Full-time maid? A. Yes.

(Testimony of Elizabeth S. Vogel.)

Q. She lived there? A. Yes.

Q. And did you require gardeners?

A. Yes, we have a gardener. And caterers. We entertain quite a bit. Les said I entertained once a month. Well, he wasn't home too much at night.

Q. Did you entertain quite a bit?

A. Yes. After all, that is how we create our business. We have to entertain a lot. And in a social way, friends, too.

Mr. Calhoun: If your Honor please, I have this question of brokerage accounts I would like to straighten out this noon, and I have no further testimony in this regard from this witness, except I do want to go into the brokerage account with her.

The Court: We will recess until 2 o'clock.

(Whereupon, at 12:01 o'clock p.m., the hearing was recessed, to reconvene at 2:00 o'clock p.m. of the same day.) [69]

After Recess

(Whereupon, pursuant to the taking of the recess, the hearing was reconvened at 2:00 o'clock p.m.)

The Court: The witness will resume the stand.

Mr. Calhoun: If your Honor please, I have two witnesses, attorneys, I would like to put on out of turn.

The Court: Proceed.

Mr. Calhoun: Mr. Partridge.

ROBERT G. PARTRIDGE

a witness called by and on behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record?

The Witness: Robert G. Partridge.

Direct Examination

Q. (By Mr. Calhoun): Will you state your occupation, Mr. Partridge?

A. I am an attorney at law.

Q. How long have you been practicing law in California? A. Since 1926.

Q. Do you remember Les Vogel, the decedent in this case? A. Yes, I do.

Q. Did you ever represent him?

A. Yes, I did.

Q. For what period?

A. It's been a long while ago, but I would guess 15 [70] years. I don't mean guess, I would estimate 15 years.

Q. Did he have any other attorney that you know of? A. Yes, he did.

Q. What was his name?

A. Skinner—I am trying to think of his first name—Virgil Skinner.

Q. In what capacity did he represent him, Mr. Skinner?

Mr. Resnik: If you know.

Q. (By Mr. Calhoun): If you know.

A. To the best of my understanding, I repre-

(Testimony of Robert G. Partridge.)

sented Mr. Vogel personally, in personal affairs, and Mr. Skinner represented the Chevrolet agency conducted by Mr. Vogel and the members of his family.

Q. It has been stipulated that in November of 1946 the limited partnership consisting of Les Vogel and Les Vogel, Jr., as general partners, and Elizabeth Vogel as a limited partner, was dissolved and a corporation was formed. Did you have anything to do with the formation of the corporation that was then formed?

A. Not that I recall.

The Court: May I inquire if that statement as to the limited partners is correct? It seems to me that the partnership was formed as of February 6, 1943, and named deceased as a general partner and his wife and son as limited [71] partners.

Mr. Calhoun: That is true, but later on, I believe the stipulation says it was changed; when the son came back from the war he became a general partner.

Isn't that correct?

Mr. Kubik: Yes.

Q. (By Mr. Calhoun): The decedent Les Vogel's will that was admitted to probate, was executed on December 13, 1946; did you prepare that will?

A. Mr. O'Connell and I did.

Q. Did you consult with Mr. Vogel?

A. I did.

Mr. Calhoun: Do you have a copy of that will?

Mr. Resnik: I haven't put it in evidence, no.

Mr. Calhoun: I have one.

Q. (By Mr. Calhoun): Do you have a file on

(Testimony of Robert G. Partridge.)
the will, an office file?

A. You are asking now for the first will, are you?

Q. For the first will.

Mr. Resnik: I thought you were asking for the will that was probated, the will of—

Mr. Calhoun: We call that the first will. I will explain that later on.

The Witness: There were two wills drawn. [72]

Q. (By Mr. Calhoun): This was the one that was signed and executed and probated.

A. No, I don't have an exact copy of it. I have a draft of it, with a number of changes interpolated. There is such a copy available in our office, but I don't have it with me—I beg your pardon, I do.

Q. You do have? A. Yes.

Q. When was the will executed?

A. December 13, 1946, according to the typewritten affixation. I believe that to be a copy of the will that was probated. Mr. O'Connell would be more familiar with that will than I am.

Mr. Calhoun: I would like to have this marked for identification.

(Petitioner's Exhibit No. 12 was marked for identification.)

Mr. Calhoun: I offer this in evidence.

The Court: Do you have any objection to this?

Mr. Resnik: No.

Mr. Calhoun: I will offer this in evidence, if your Honor please.

The Court: It will be received as Exhibit 12.

(Testimony of Robert G. Partridge.)

(Petitioner's Exhibit No. 12 was received in evidence.) [73]

Q. (By Mr. Calhoun): Handing you Exhibit 12, purporting to be the last will and testament of Leslie Vogel, executed December 13, 1946, is this the will which was drawn, executed, filed and probated?

A. Yes. To the best of my knowledge and belief, it is. I haven't a copy of the will probated on file. It is the only copy of the will, of a will we have in our file, except another one executed several years later — I beg your pardon — drawn several years later, but not executed.

Q. At the time that will was drawn did you discuss the provisions of the proposed will, that is, prior to the time it was drawn, did you discuss the provisions of the proposed will with Mr. Vogel?

A. Yes, sir.

Q. Did you take any notes at that time?

A. Yes, sir.

Q. Do you have any notes with you, such notes with you?

A. Yes. I have some notes here, some of which may pertain to the first will, some of which may pertain to the second will, and I am unable to tell you from looking at it which pertains to which. They could possibly be identified by various figures contained in them, or amounts, things of that sort, which might be tied into a time check as to the happening of events and how much the estate amounted to at such a time and what the status of the entity of the company [74] was at that time, but from the

(Testimony of Robert G. Partridge.)

notes themselves I can't accurately tell you whether they referred to the original will or the second one.

Mr. Calhoun: I would like to have this one marked separately.

The Court: Is this paper supposed to be of a will?

Mr. Calhoun: These are his original notes, drawn up at the time.

The Witness: You might say they were working notes that were given to me by Mr. Vogel at the time of our discussion.

The Clerk: Petitioner's Exhibit 13 for identification.

(Petitioner's Exhibit No. 13 was marked for identification.)

Q. (By Mr. Calhoun): Handing you what has been marked Petitioner's Exhibit 13 for identification, which states on the top of it, "Les Vogel Chevrolet Company, Les Vogel General Partner, Les Jr. Genl. Partner, Elizabeth Ltd. Partner," by that could you tell roughly what time those notes were taken?

A. I can't, except to tell you that they were taken at a time when the Chevrolet Company was so constituted as Mr. Vogel told me it was. You bear in mind that I said before that I had nothing to do with the entity of the Chevrolet [75] Company, whether it was a corporation or a partnership, so therefore I didn't enter into any of those changes or accomplishments, and I have no independent recollection as to when these dates were—

(Testimony of Robert G. Partridge.)

Q. Assuming that it has been stipulated that on November 1, 1946, the business was incorporated and the partnership balance sheet as of October 13, 1946, filed with the application for incorporation showed the following accounts, involving the partners, and they here list accounts payable and they also list partners' capital, Les Vogel \$32,709.22, Elizabeth Vogel \$32,709.20 and Les Vogel, Jr., \$32,709.20, and it is also stipulated that the opening balance sheet for the corporation as of November 1, 1946, showed the following: capital stock \$150,000, and it's also stipulated that the order to provide the \$50,000 payment by each partner for the stock issued, the amounts necessary to bring the partnership capital accounts up to \$50,000 were taken from the accounts payable, would that refresh your recollection as to any limiting dates of when those notes were taken?

A. May I ask a question? Do I understand that in that question you have incorporated the fact that on the date you mention, in November of 1946, the entity of the Chevrolet Company was converted to a corporation?

Q. That is correct.

A. Then, these were taken before that time. [76]

Q. They were taken before that time?

A. Yes.

Q. And they were taken in preparation for a will, is that correct? A. Yes, sir.

Q. And those are the only two wills that you drew at any time, drafted, for Mr. Vogel?

(Testimony of Robert G. Partridge.)

A. We have only mentioned one before, that one, and then we drew another one which we sent to him after further consultation with him, which was not executed, according to my knowledge.

Q. Which will was the one that these notes referred to? A. The first one.

Q. The one in evidence, is that correct?

A. Yes, sir.

Mr. Calhoun: I would like to offer this in evidence.

Mr. Resnik: May we take the witness on preliminary examination to find whether we have any objection to this?

The Court: Very well.

Examination On Voir Dire

Q. (By Mr. Resnik): I show you Petitioner's Exhibit 13 for identification and ask you whether that is in your handwriting.

A. Yes, all of it.

Q. All of it? [77] A. Yes.

Q. Does the words "Transmutation Agreement (January 1, '43)" appear in your handwriting?

A. Yes, sir.

Q. Was that incorporated at the time, at the same time?

A. Yes, sir. This was all, except for the identification mark of the Court, all written at substantially the same time, in the one interview.

Q. When was that interview held?

A. I can't answer that, sir, except to say that

(Testimony of Robert G. Partridge.)

it was prior to the date mentioned by counsel, on which the Chevrolet Company was apparently constituted a corporation. I can only say this from recollection, and it is not the best, that Mr. Vogel and I had been discussing a proposed will and estate for him for a number of weeks before we finally got down to drawing it, and I am not sure whether it was weeks or months, but I am sure that on that date he told me, as of that time, as of the time he was talking to me, the Les Vogel Chevrolet Company was a co-partnership.

Q. Do you have any other notes that were taken at or about the same time?

A. I have notes here that I am again unable to identify, as to whether they were taken in connection with the first will or the second will.

Q. You have handed me an additional sheet of paper, [78] written in pen and ink. Do you have any other notes? A. Yes, I do.

Mr. Resnik: If your Honor please, I am not going to pursue the line of inquiry any further, but I would interpose an objection to the receipt of only part of what appears to be a whole file of notes. I believe it would be misleading to the Court to receive only part of a whole packet of material that may have some evidentiary value, I fail to see the significance of this one sheet, but if it all came before the Court, then I would have no objection. To give the Court only part of it, I think, is clearly objectionable. On that basis, I would interpose an

(Testimony of Robert G. Partridge.)

objection to the receipt of Petitioner's Exhibit 13 for identification.

Mr. Calhoun: As far as the materiality of these notes are concerned, these are his original notes, "Les Vogel Chevrolet Company", he puts down one-third each, it is all in the handwriting of the witness, \$350,000 net value", "Transmutation agreement (January 1, '43)", which we think is very pertinent in this case, and that is the main purpose of these notes. There were some other items put down which I am not concerned with one way or the other, but this is the part which I have referred to in my opening statement, which I think is very important, and if counsel wants to know why we want it in, that is the reason.

Mr. Resnik: I should just like to direct the Court's [79] attention that there are many other notes of the same type, and only part of it is being offered to the Court. I would further say that an objection now would lie to the receipt of the exhibit if the Petitioner seeks to prove by the proffered exhibit that a transmutation agreement did exist. That would be hearsay as to us. These are merely the notes of Mr. Partridge and are not the evidence of the parties to such an agreement.

The Court: They might be corroborated. It will be admitted.

The Clerk: Petitioner's Exhibit 13.

(Petitioner's Exhibit No. 13 was received in evidence.)

Q. (By Mr. Calhoun): Handing you Petition-

(Testimony of Robert G. Partridge.)

er's Exhibit 13, which has been admitted in evidence, at the time you made those notes did you discuss with Mr. Les Vogel the status of his property?

A. Yes, I did.

Q. What were your discussions?

A. Generally of what his property consisted, the interest of his wife in the properties, the business, the home, stocks and bonds, cash, life insurance, his interest in the same, and his son's, and how each would fare under the circumstances discussed, in the event of his death, I mean, or in the event of the death of any of them. [80]

Q. Did you ever have any understanding with him as to the status of the property, of the interest of the three partners in the partnership?

Mr. Resnik: I would object, your Honor. I believe that would be hearsay as to us, if the testimony is offered to prove the fact of the status.

The Court: The question is stated a little unfortunately.

Mr. Calhoun: I will put it this way:

Q. (By Mr. Calhoun): What caused you to write in your own handwriting on Exhibit 13 "Transmutation Agreement (January 1, '43)"?

A. I can only tell you this, Mr. Calhoun, any information I wrote down here was information given to me by Mr. Vogel. I had no independent information on this subject. Therefore, I can only conclude at this late date that the reason for the thing that caused me to write down that particular statement you asked about, "Transmutation Agree-

(Testimony of Robert G. Partridge.)

ment (January 1, '43)", was that Mr. Vogel told me of such an agreement having been executed that date.

Q. Do you know whether you had any discussion with him about such agreement being in writing or otherwise?

A. I couldn't answer that. I couldn't answer that. If I had an impression, I will call upon my recollection, again of many years back. My best recollection would be to [81] the effect that it was not in writing but had been accomplished through a series of transfers of some sort.

Q. Now, subsequent to the execution of that will in December of 1946, did you consult with Mr. Vogel, Sr., the decedent, pertaining to a new will?

A. Yes, sir.

Q. Do you recall when that was?

A. Sorry to be so awkward about this, but these papers are rather misplaced. My recollection is that it was sometime in 1950, I am not sure of that, and I don't find anything that verifies it in these papers.

Q. I will see if I can refresh your memory. It has been stipulated in this case—

A. May I interrupt you for just a moment? It might save some time.

Q. Yes.

A. Do you have further possession or would you ask Mr. O'Connell whether he has in his possession the proposed draft of the new will? I thought

(Testimony of Robert G. Partridge.)

I did, but I don't seem to be able to put my fingers on it.

Q. I have in my possession that which is a proposed draft of a will—if this is the one you are referring to, I don't know.

A. Yes, this is the one I am referring to. This is in 1950, it's antedated, yes, sir, sometime in the year of 1950 and before the preparation of this will you just handed me [82] or proposed will you just handed me, I had further discussions with Mr. Vogel about amending his will.

Q. To limit the time and to possibly refresh your memory, it has been stipulated in this case that the decedent and his wife had separate brokerage accounts with Dean Witter & Company, and the decedent's account was opened in 1946 and his wife's in 1948. Purchases by decedent during 1946 and 1947 were charged to his partnership drawing account prior to the partnership dissolution on October 31, 1946, and to their drawing account on the corporation's books subsequent to that date. Investments in wife's brokerage account were paid from a checking account at the Marina Branch of the Bank of America in the name of Les or Elizabeth Vogel. Having in mind the dates that the brokerage accounts were opened, decedent's account opened in 1946 and his wife's in 1948, does that refresh your memory at all as to when the discussions commenced in regard to the drafting of a proposed new will?

A. I am afraid not. I don't attach any particu-

(Testimony of Robert G. Partridge.)

lar significance, as I now remember the situation, to those brokerage accounts or bank accounts. The discussion I had concerning this latest proposed will from Mr. Vogel was sometime over a period of, again, weeks or maybe even months, prior to the drafting of the will.

The Witness: If I may interject a moment, your Honor.

A. (Continuing) Mr. Vogel was not particularly zealous [83] in pursuing these matters. We would talk about them and then when he, in his own good time he would come to see me, so these things went on rather interminably, is what I am trying to get at, so the discussions might very well have continued on or commenced at least for as long as six months prior to the draft of this will or longer or somewhat shorter. I know they were prolonged, shall I say, and finally culminated in me drafting this proposed will.

Q. Do you recall whether you drafted the proposed will or whether Mr. O'Connell drafted the proposed will?

A. I don't recall, but if the ordinary routine of our office was followed, Mr. O'Connell would have drafted it. I do not engage in this type of practice. Our usual custom is for me to secure such information as I feel, as I deem proper and necessary and transmit it to Mr. O'Connell who then draws the will, or drew the will.

Mr. Calhoun: I would like to have this proposed will marked for identification purposes.

(Testimony of Robert G. Partridge.)

The Clerk: Petitioner's Exhibit 14 for identification.

(Petitioner's Exhibit No. 14 was marked for identification.)

Q. (By Mr. Calhoun): Handing you Petitioner's Exhibit No. 14, marked for identification, is this a copy of the proposed will that was [84] drafted by your office?

A. That is the original.

Q. That is the original?

A. Yes, sir, of the proposed will drafted by our office.

Q. Which has never been signed, is that correct?

A. This one certainly hasn't, and it was my understanding that no other copy was signed.

Q. I will offer this proposed will in evidence.

Mr. Resnik: I will object to it, your Honor. It is not the will which was probated.

The Court: What is your theory of this?

Mr. Calhoun: My theory is that the question is at what time and when, if it happened at all, the property became separate property, how did the people treat it themselves, as separate property or as community property? It is just one of the links in the chain of evidence to show that this property was separate—this says right here—mind you, this was drafted before the death of the decedent—the date of his death is August 16, 1950, and this was drafted in 1950.

“Fourth: My said wife and I, having heretofore

(Testimony of Robert G. Partridge.)

and by written agreement converted our community property to separate property, and having segregated and separated the same, I hereby declare that it is my intention by this will to dispose of all property standing in my name as separate property, my wife having no community interest therein," and so [85] on.

Mr. Resnik: Please, may we be heard, your Honor?

Mr. Calhoun: If your Honor wants further corroboration on that point, I have Mr. O'Connell here to testify as to the actual drafting of the will.

The Court: Very well, Mr. Resnik.

Mr. Resnik: If your Honor please, the only foundation that has been laid for the introduction of Exhibit 14 for identification is that there was some discussions had between the witness now on the stand and the decedent with reference to the drafting of a proposed will. The witness himself has testified that he did not draft Exhibit 14 for identification.

Furthermore, there is no showing, since the will is unexecuted, that any statement therein comports with the decedent's concept of what he had in mind. It may have been completely contrary to this. We don't know. All we have is an unexecuted will.

Furthermore, the portion of the will read to you by Mr. Calhoun states, in paragraph Fourth: "My said wife and I having heretofore and by written agreement converted our community property to separate property", completely contrary to the fact

(Testimony of Robert G. Partridge.)
of record here, which at best is that there was no written agreement of transmutation, which is the testimony of the witness on the stand, and it is the testimony of that witness which is being offered as the basis for the offer of [86] Petitioner's Exhibit 14. On those grounds, we believe the exhibit should not be received.

The Court: The exhibit will be received.

(Petitioner's Exhibit No. 14 was received in evidence.)

Q. (By Mr. Calhoun): Handing you Petitioner's Exhibit 14 received in evidence, I will ask you if this was drafted from information obtained by you as to the wishes of the decedent Les Vogel.

A. Yes, it was.

Mr. Calhoun: No further questions.

Cross Examination

Q. (By Mr. Resnik): Mr. Partridge, did you ever prepare a written agreement for the Vogels which purported to transmute community property to separate property?

A. Not to the best of my recollection.

Q. I understand that you were the personal attorney of the Vogels for about 15 years?

A. Not of the Vogels. Of Mr. Vogel.

Q. Did Mrs. Vogel have her own personal attorney? A. I don't know.

Q. When did you first commence to serve Mr. Vogel as a legal adviser?

A. I can't answer that with accuracy. He had

(Testimony of Robert G. Partridge.)

some problems with one of the finance companies in San Francisco, the [87] Morris Plan Company, and it is my best recollection that that was the first time I served him.

Q. When was that?

A. I say, I can't answer that really accurately. It would be wild conjecture; if you want my best guess or speculation on it, I would say it was in the middle thirties, '35, along in there, '35 to '40, sometime in there.

Q. Did Mr. Vogel during the conversations he had with you preceding the drafting of the will, Exhibit 14, show you any written agreement which would have transmuted community property to separate property?

A. I have no recollection of him having done so.

Q. Did he discuss that with you?

A. Yes, he did.

Q. What did he say?

A. I have no recollection of that, save again a vague one that he had made a disposition of Mrs. Vogel's share of the company to her, and to his son, and he was interested in determining what provision, among other things he was interested in determining what provision he should make for his daughter, in equity and in fairness to all members of his family. I have a distinct impression or recollection that he, in discussing these things with me, shall I say, was under the impression that the share of the community property of Mrs. Vogel had been transferred to her as her own property. Now, I

(Testimony of Robert G. Partridge.)

can't [88] tell you whether he said that was in writing or was an accomplished fact through something that had been done on his behalf and on Mrs. Vogel's behalf by others. I know it wasn't, I am sure it wasn't, done by me.

Q. Do your notes reflect that conversation that you had with Mr. Vogel which served as a basis for the drafting of the unexecuted will, Petitioner's Exhibit 14?

A. Well, my conclusion as to what my notes reflect may or may not correspond with yours. I will be glad to show them to you.

Q. Would you hand me all of your notes, then, that relate to the drafting of the executed and the unexecuted will of the decedent?

A. Yes. Will you accept my apologies as I give them to you for their obvious inadequacy?

Q. Now, you have handed me nine yellow sheets which you believe purport to be your notes with reference to the drafting of the wills of Les Vogel?

A. Yes, sir. I don't believe that to be; I know they are.

Q. I notice that there are on the witness stand additional sheets of the same nature and I ask you if those contain any further information with reference to the drafting of the wills.

A. I was just about to look through them, to look for [89] that very thing, and if you will permit me to, I will.

Q. Please do.

A. And then I can answer your question. The

(Testimony of Robert G. Partridge.)

only thing that might fall within that category are some interpolated notes on drafts of wills, you see, marginal notes.

There are notes of Mr. O'Connell's here, but you are asking for my notes now only, Mr. Resnik?

Q. Yes.

A. These others that you were looking at are Mr. O'Connell's.

If I may now answer your question, I have no other notes purporting to reflect conversations with Mr. Vogel concerning the preparation of his wills other than the ones you have in your possession, and other than marginal notes in a draft of a will.

Mr. Resnik: I ask the clerk to mark one of the sheets that you handed me as Respondent's Exhibit next in order for purposes of identification.

The Clerk: Respondent's Exhibit E for identification.

(Respondent's Exhibit E was marked for identification.)

Q. (By Mr. Resnik): I show you, Mr. Partridge, Respondent's Exhibit E for identification and ask you whether you can determine whether that sheet represents notes relating to the probated will or [90] to the unexecuted will.

A. I am afraid that I cannot, sir. The only possible way I could identify it, if I knew, at the time, or whether the value of the stock, rather, in the Chevrolet Company, was then apparently given to me at \$200,000 each. That is the only way I can tell you. Otherwise it bears no date.

(Testimony of Robert G. Partridge.)

Q. However, at that time, Les Vogel, the decedent, whom you refer to as Les, advised you that Mrs. Vogel's interest, whom you refer to as "Mrs. Les", that her interest in the Chevrolet Company was community property?

Mr. Calhoun: It doesn't say that at all.

Mr. Resnik: I am asking the witness what it says.

Mr. Calhoun: I thought you said that.

Mr. Resnik: I am asking him, the witness.

Mr. Calhoun: You said at that time.

A. No. I can read what I wrote down, and the Court can place their own interpretation on it.

Q. (By Mr. Resnik): Yes, please do.

A. These notes say this: "Les Vogel and his wife each own stock of Chev Company valued at \$200,-000 each. Mrs. Les got hers by gift from Les, although it was community property. No tax paid on transfer."

Now, I don't know the meaning, I can't tell you now the meaning of the word "was", whether that refers to the [91] present or it had been community property, I have no—wait a minute, I do. Just a moment, please. Now, that refers to, I am quite sure, that refers to the time the stock was transferred to Mrs. Vogel and not to the present time. When I said "although it was community property", I was then stating or reflecting what Mr. Vogel told me, that at the time that the stock was transferred it had been community property, rather than as of that date.

(Testimony of Robert G. Partridge.)

Q. Did you advise them that a gift tax or return had to be filed? A. I did not.

Q. Did you prepare such return for them?

A. No.

Mr. Calhoun: No gift tax return had to be filed in a division of community property.

Mr. Resnik: I am not certain of that at all, your Honor. That is a legal matter.

The Court: There is no purpose served in arguing.

Mr. Calhoun: But he said, "Did you advise them that a gift tax or return had to be filed?" leaving the inference that a gift tax return had to be filed in a division of community property, and it doesn't have to be filed.

Mr. Resnik: I will ask the Clerk to mark another sheet.

Mr. Calhoun: I would like to offer that sheet in [92] evidence, if your Honor please, the one that has just been marked Respondent's Exhibit E. I would like to offer that in evidence.

The Court: Do you wish to join in this, Mr. Resnik?

Mr. Resnik: No, your Honor.

The Clerk: No. 15, then, your Honor.

The Court: It will be marked 15.

The Clerk: Respondent's Exhibit E for identification is admitted in evidence as Petitioner's Exhibit 15.

(Testimony of Robert G. Partridge.)

(Respondent's Exhibit E for identification was received in evidence as Petitioner's Exhibit No. 15.)

The Clerk: Respondent's Exhibit F for identification.

(Respondent's Exhibit F was marked for identification.)

Q. (By Mr. Resnik): I show you, Mr. Partridge, another sheet of your notes, marked Respondent's Exhibit F for identification—

Mr. Resnik: If counsel will permit, I think we can agree that these notes relate to the second, unexecuted will, Exhibit 14?

Mr. Calhoun: Agreed.

Q. (By Mr. Resnik): And I would like you to satisfy yourself also that that is the case, so would you pursue it? [93]

A. I can't satisfy myself from looking at it, although I would suspect it was. If you two gentlemen agree, I suppose there is nothing for me to disagree about.

Mr. Resnik: If we may go off the record for a moment, I think we can satisfy counsel, too, and save a lot of time.

Q. (By Mr. Resnik): You will notice, Mr. Partridge, a note here, "\$500 to satisfy the housekeeper."

A. I am not sure that was in the first at all, but I have no quarrel with your conclusions on the subject. I just am unable to tell on there.

Mr. Calhoun: Stock there?

Mr. Resnik: Yes.

• (Testimony of Robert G. Partridge.)

Mr. Calhoun: If it says stock, I will agree, because there wasn't any stock in the first will, as a partnership, at the time it was prepared.

Q. (By Mr. Resnik): I will ask you to read to us a sentence that begins: "Draw agreement, et cetera."

A. Draw agreement constituting transfer of stock"—"Division", I take it, that is—does that look to you—"Division of community property and transmuting same."

Q. So that, with reference to the second will, there was some discussion as to the drafting of a written agreement [94] transmuting the property, that is, the interest in the Les Vogel Chevrolet Company?

A. That was a discussion instituted by and not Mr. Vogel, as I recall it, sir.

Q. And, as a result of that discussion, no such agreement was drawn by you, was there?

A. Well, I can only say that I haven't any recollection of any agreement being drawn. I can't say that it was as a result of that discussion, Mr. Resnik.

Q. Your files do not contain such an agreement?

A. We have been unable to find one.

Mr. Resnik: I should like to offer in evidence Respondent's Exhibit F for identification.

Mr. Calhoun: No objection.

The Court: It will be received.

(Respondent's Exhibit F was received in evidence.)

(Testimony of Robert G. Partridge.)

Mr. Resnik: I will ask the Clerk to mark another sheet of the notes of Mr. Partridge's for identification.

The Clerk: Respondent's Exhibit G for identification.

(Respondent's Exhibit G was marked for identification.)

Q. (By Mr. Resnik): I will show you a sheet of your notes which has been marked Respondent's Exhibit G for identification and I [95] will ask you if it is possible for you to relate that sheet to either the executed will, probated will, or to the unexecuted will.

A. It refers to the corporation as in existence at that time.

Q. Oh.

A. Apparently.

Q. I see. So, from that, you would assume that it related to the second will, when the corporation was in existence?

A. Yes, sir. I have discussed, I mean, rather, I have reflected the statement that the correct name of the company is a corporation, name of the five directors, the name of the assets, and I have to assume, I have no independent recollection, I have to assume that it refers to the second will, or the proposed will.

Mr. Resnik: We will offer in evidence Respondent's Exhibit G for identification.

Mr. Calhoun: No objection.

The Court: It will be received.

(Testimony of Robert G. Partridge.)

(Respondent's Exhibit G was received in evidence.)

Q. (By Mr. Resnik): I show you, Mr. Partridge, Petitioner's Exhibit 13 and direct your attention to a phrase that appears thereon: "Transmutation Agreement (January 1, '43)." I ask you what [96] you sought to convey to yourself or Mr. O'Connell by that note.

A. I sought to convey to myself and consequently to Mr. O'Connell that that transmutation agreement had been executed between Mrs. Vogel and Mr. Vogel on January—I say executed; it had been entered into—I repeat, as I told you, I have recollection now, whether he said or anyone said it was in writing or it came about by something that had been done, but that in any event the community property had been transmuted by writing or otherwise on January 1, 1943.

Q. When you say "the community had been transmuted", what do you mean by that?

A. I mean that it had been divided into the separate property of each.

Q. That is, whatever was community property before had become the separate property of, one-half the separate property of Mr. Vogel and the other half the separate property of Mrs. Vogel?

A. Not all that was community. This related to the business, the interest in the Chevrolet agency, rather than stocks, bonds, securities, home and things of that sort.

Q. What else did Mrs. Vogel own at that time?

(Testimony of Robert G. Partridge.)

A. I don't know, but my notes reflect certain items of property here—I will be glad to read them to you. But that is all the information I have on it. [97]

Q. What do your notes reflect as to what they possessed at the time that you drew the will that was executed?

A. They reflect that the Les Vogel Chevrolet Company was a co-partnership, that Mr. Les Vogel, deceased, was a general partner owning a third of the partnership, that Les, Jr., was a partner owning a third of the partnership, that Mrs. Elizabeth Vogel was a limited partner owning a third interest, that the net value of the partnership was at that time \$350,000, that—here is a note that was made and scratched out—that Mr. Vogel, Jr., signed a note payable to Mr. Vogel and Mrs. Vogel for \$3,300—or that could be 3, I am not sure—\$3,000. Could you assist me here? Does that look like "33" to you?

Q. Possibly it could be 33 thousand.

A. Thirty-three thousand dollars. That there was property on Mission Street purchased with \$50,000 taken out of the partnership, that yielded 8 per cent per annum, which left a net worth to the incorporation of \$275,000—that it was incorporated for \$150. There is a notation "Loan to corporation for \$125,000." I have no recollection of what that means at this time. It is further reflected that Mr. Vogel deemed that he had \$20,000 in life insurance, \$30,000 in cash, \$16,000 in bonds,

(Testimony of Robert G. Partridge.)
and a hundred thousand dollar interest in the business.

And yet, in a similar notation appearing just opposite that, those figures were changed, the first figures were [98] scratched out, rather, and at that time he told me that there was \$20,000 worth of life insurance upon his life, that he possessed \$30,000 in cash, \$31,000 in bonds and \$116,600 as interest in the business, or a total of \$197,600.

And at that time Elizabeth, who was Mrs. Vogel, Elizabeth Vogel had \$18,000 in cash, \$20,000 in cash—you will have to decipher this figure with me, if you will, it's either 10 or—it's been imprinted over—it looks to me like it finally ended up as \$10,000 in bonds, do you agree?

Q. Yes.

A. HSF (Household Furniture) on Marina Boulevard plus inheritance, that Mr. Vogel, Jr., at that time had \$20,000 in cash, a thousand dollars in bonds and one-third of the business plus the inheritance.

Does that answer your question?

Q. What did the transmutation agreement that you refer to in your notes seek to do? You understand, with reference to the property that you have stated was owned by Mr. and Mrs. Vogel.

A. I don't think I understand your question, sir.

Q. You have stated in your notes, Exhibit 13, that you received some information about a transmutation agreement. A. I see.

(Testimony of Robert G. Partridge.)

Q. January 1, '43. A. Yes. [99]

Q. What did that agreement, as you now recollect, propose to achieve, with reference to the properties that you delineated, that were possessed by the Vogels at that time?

A. To transmute to Mrs. Vogel one-third of the interest in the Chevrolet Company as then constituted.

Q. And nothing more?

A. That is right. There was never any discussion that I remember concerning any other things, other than the Chevrolet Company.

Q. Did you pursue that matter with Mr. and Mrs. Vogel at all, the matter of the transmutation agreement, at that time?

A. No then. I did later.

Q. When you say "later", when later?

A. When we were talking about the second will.

Q. What discussions did you have at that time?

A. Mr. Vogel—these notes now remind me—had taken a position when he talked to me initially that this property had been transmuted. He didn't know the details, and I didn't either, frankly. I felt that in order to sanctify the situation or to implement it, shall I say, assuming it had been done in the first place, it would be better to have some expression in writing, and I suggested that to him, and that is reflected in those later notes that are now in evidence—I have forgotten the exhibit number—but again it was something, a relationship something like this, Mr. Resnik: Mr.

(Testimony of Robert G. Partridge.)

Vogel was not skilled [100] in the law or in the ways of business or estates of this sort. When he did talk to me initially he always took the position, "This is Mrs. Vogel's property," as her own, but he was never able to very clearly, or at all clearly, tell me why it was. Therefore, when you ask me whether I pursued it, I did at the time this second will was discussed, and at that time said we ought to set it down in writing so there would be no question about it.

Q. Did you discuss that at all with Mrs. Vogel?

A. Not to my recollection.

Q. And Mr. Vogel used the term "separate property" and the term "community property"?

A. Undoubtedly, but I can't sit here and tell you that I specifically remember it. Whatever terms he used, may I say, that he conveyed to me, as we were discussing these matters, that he was under that impression, the interest of Mrs. Vogel in the company was her own property, as such, call it separate, as it should be, or otherwise, the effect that I gathered or the understanding that I gathered from his discussions was the same.

Q. Didn't some difference of opinion arise between you and Mr. Skinner as to the nature of a property of the Vogels at the time that it was necessary to file the estate tax in the estate of J. Leslie Vogel?

A. I think that could be better answered by Mr. O'Connell. [101] I did very little in connection with the probate of the estate. I might state that there

(Testimony of Robert G. Partridge.)

have been differences of opinion between Mr. Skinner and me on various occasions on various subjects. Whether they have included that question, I can't answer, but Mr. O'Connell was the one who took the active interest in the probate of the estate. I did not.

Q. Did you take any part in the preparation of the income tax returns of the Vogels during their lifetime? A. No.

Q. You are not familiar with that?

A. Familiar as to whether I took any part in them?

Q. Familiar with the returns as filed or the declarations made in such returns, as to the nature of the property.

A. No, I have no recollection of ever having seen one.

Q. Do you recall having a meeting with Mr. Emil Kubik, State Tax Agent, who sits at my right?

A. I have seen the gentleman before. I talked to him before. But I couldn't tell you when.

Q. Do you recall that in late 1955 at your office on two occasions—I am sorry, the early part of 1955, in January 1955—you had two discussions with Mr. Kubik with reference to the estate now in question?

A. I recall talking to the gentleman sitting to your right, whom you have identified as Mr. Kubik, and I also recall talking to someone in my office, at least on one occasion, about [102] the estate of Vogel. I am unable to tell you whether it is the

(Testimony of Robert G. Partridge.)

same gentleman you have identified as Mr. Kubik or not. I do not deny it, and if you tell me that he was, then he is the one who was there. I just have no recollection on the subject.

Q. Do you recall that at that time you made a statement that, to him, that you believed all the property owned by the Vogels at the time of Mr. Vogel's death was community property?

A. No, I don't, I have no recollection of that.

Q. Do you further recall that you made a statement to Mr. Kubik in the conference of January 14, 1955, that you had no knowledge of any agreements relative to the transmutation of community property to separate property?

A. That was my frame of mind and always has been, so I would not doubt that I told him that. But I have no independent recollection of it.

Q. Didn't you tell Mr. Kubik in the meeting of January 18, 1955, that in your view, having known Mr. Vogel for many years and having counselled him in legal matters for many years, that you believed he didn't know the difference between community property and separate property or jointly owned property?

A. I might have. I can't tell you whether I did or did not.

Q. Don't you recall telling Mr. Kubik at that time that [103] in your impression, after having counselled Mr. Vogel in legal matters and having assisted in the preparation of his will, that you believed he regarded everything as community prop-

(Testimony of Robert G. Partridge.)
erty, since it was all accumulated through the efforts of himself in his business endeavors?

A. If I may make this comment—no. First, of all, let me answer your question. I don't recall saying that. To the best of my recollection, I have no notes reflecting that. To the best of my recollection, Mr. Kubik came in one day, I remember one day, I don't deny it, it might have been two days, and we spoke rather lightly in general over the counter in our office, and I may very well have told him that in my judgment Mr. Vogel didn't really know the difference, meaning legal significance, between separate and community property, and I think that is possibly the fact, but that my impression of Mr. Vogel's activities or position in the matter was that he felt he had turned over to Mrs. Vogel, as her property, her share of the business, that I didn't know how it had been accomplished and hadn't been able to find out and didn't know whether, in fact, it had been accomplished. And I still don't know. Now, that was the general tenor of my discussion with Mr. Kubik, as I remember.

Mr. Resnik: No further questions at this time.

Mr. Calhoun: I would like to ask one question.

Redirect Examination

Q. (By Mr. Calhoun): You are familiar, are you not, with the fact that division of community property does not result in a gift tax?

A. No, I won't admit that. I don't do tax work

(Testimony of Robert G. Partridge.)

or state work. I am glad Mr. Vogel didn't ask me if it needed to be taxed, because I could have given him no correct answer. I am ashamed to admit that, your Honor, but I do no tax work whatsoever.

Mr. Calhoun: No further questions.

The Court: You may be excused.

(Witness excused.)

Mr. Calhoun: I will call Mr. O'Connell.
Whereupon

WALLACE O'CONNELL

a witness called by and on behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: Be seated and state your name, please.

The Witness: Wallace O'Connell. Although my lawful name is William Wallace O'Connell, I don't use the name William in business at all. That is my full true name.

Direct Examination

Q. (By Mr. Calhoun): You are an attorney-at-law, are you not? A. I am.

Q. And you are associated with Mr. Partridge?

A. I am. [105]

Q. I hand you what is marked Petitioner's Exhibit 14, purporting to be a proposed will or draft of the last will and testament of J. Leslie Vogel, as has been previously identified. Did you have anything to do with the making of that draft?

(Testimony of Wallace O'Connell.)

A. Yes, I would say that the verbiage and so forth, insofar as it contains any amendments of the original will, and there were substantial ones, were all my work.

Q. Do you have any notes of your own concerning that draft, and particularly concerning Paragraph Fourth?

A. Well, let me say this, that I have here two classes of notes, a long sheaf of them representing drafts of the exact verbiage of this proposed will and one proposed for Mrs. Elizabeth Vogel, and then a couple of others—if I may look at those again, please—that are general notes made in conference, I would say, with Robert Partridge, preparatory to my drafting the will.

Q. Do you have any note in there that relates to Paragraph Fourth?

A. I believe—I see here my longhand draft of the amendment to Paragraph Fourth from the original will that was in the file. This is my longhand, it is no more than an exact transcript of what was typed into Fourth, Paragraph Fourth.

Q. Before you drafted that did you have any preliminary notes? [106] A. Yes, I do.

Q. What?

A. I have a sheet here, that is, of my notes made at the time, after consultation between Mr. Vogel, Sr., and Mr. Partridge, that represent Mr. Partridge's extract or comment summation of his notes to me, instructing me as to what he wanted accomplished.

(Testimony of Wallace O'Connell.)

Q. Can you point out any reference there as to Paragraph Fourth?

A. Not any specific reference to Paragraph Fourth. There are some notes here having to do with the same general area of—

Q. That is what I mean, the same general area.

A. Or subject.

I have a note here, verbs and so forth are left out of these notes, it says, "To leave no doubt, an agreement transmuting community property"—this is all in shorthand—"Com prop to her prop"—that would mean community property to her separate property.

Q. Do you recall why you said, "To leave no doubt"?

A. I don't. I don't. All that I can say is that when I came to drafting the will in its final form—and when I say "final form", the form we submitted to Mr. Vogel to execute some weeks or a month or two before his death—I prepared Paragraph Fourth of this as it now reads, which recites a segregation. [107] That is based on some oral impression of mine at the time.

Q. Handing you what has been marked Petitioner's Exhibit No. 13 in evidence, which has been identified as being entirely in the handwriting of Mr. Partridge, did you have this information available to you when you drew the second will, proposed draft of the second will?

Mr. Resnik: I think the question is vague and misleading. It is not a question of whether it was

(Testimony of Wallace O'Connell.)

available. Undoubtedly it must have been in the office.

Mr. Calhoun: We can find out whether it was and then I can go on from there, if your Honor please.

The Court: Proceed.

Q. (By Mr. Calhoun): Answer the question.

A. I had all of Mr. Partridge's notes available and in hand, I would say.

Q. Did you go over those notes?

A. To the extent I was in any doubt or confusion as to any date or detail.

Q. Did you happen to see where it says "Transmutation agreement (January 1, '43)"?

A. If I may answer that this way, I would say—we have been talking here of the so-called second will?

Q. That is right.

A. And these notes that you now show to me, this Exhibit [108] 13 for the Petitioner, are notes back at the date of the original will, in the '46 will, with which I had some limited connection also. Whether I had these notes before me—you see, this is a will filed, we would have preserved a will file for Les Vogel from the time we first drew his will, and those notes would have been in there, I might have thought it necessary or not necessary to go over them at the time of the second one, and I cannot answer it.

Q. I am trying to bring out if you have any recollection as to why you said in your Plaintiff's

(Testimony of Wallace O'Connell.)

Exhibit 16, which has been marked for identification, I don't believe it has been admitted yet, "To leave no doubt, an agreement transmuting com property to sep property."

Mr. Resnik: If your Honor please, the question has been asked and answered and I think it is objectionable on that ground. He stated that he had no recollection.

The Court: You may answer.

A. The only thing that I can say in that regard, that looks, it looks there, as it sits there, and it is not in my memory at the time, that Mr. Partridge may have suggested that I give consideration whether we should prepare a formal recital of what was done in the form of a formal transmutation agreement, the words "To leave no doubt". Now, I would be, not speculating, but my memory is this, that at some stage at some date, and it may have been this date of January 1, '43, [109] a partnership was created, and that was some kind of a writing that segregated this business into separate interests, and he may have asked me for an opinion, which I may have even researched or given him some answer on at that time or given him some conclusion of my own, that was sufficient in and of itself to segregate, but I have no recollection of it now.

Mr. Resnik: I move that the answer be stricken as indicating no present recollection or knowledge on the part of the witness, as reflected in the answer itself.

(Testimony of Wallace O'Connell.)

The Court: Motion denied.

Mr. Calhoun: I will offer in evidence Petitioner's Exhibit 16, to be marked for identification.

Mr. Resnik: No objection.

The Court: It will be received.

(Petitioner's Exhibit No. 16 was marked for identification and was received in evidence.)

Mr. Calhoun: Could I call Mr. Hardy, who is right here, for about three questions, and that is all? I would like to be able to let him go on his way. He is very anxious to get away. He came up here without a subpoena.

The Court: You may step down, Mr. O'Connell.

(Witness temporarily excused.)

Whereupon

ARTHUR M. HARDY

a witness called by and on behalf of the Petitioners, being [110] first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Arthur M. Hardy.

Direct Examination

Q. (By Mr. Calhoun): What is your occupation, Mr. Hardy?

A. I am a building contractor.

Q. Did you ever have occasion to build a building called the Anse Vista Apartments?

A. I did.

(Testimony of Arthur M. Hardy.)

Q. In that connection, whom did you negotiate with in regard to that building?

A. I designed and built the building for Eliza-Vogel.

Q. Did you negotiate with Mr. Vogel or did you negotiate with Mrs. Vogel?

A. All my negotiations were with Mrs. Vogel.

Q. Do you know whether or not the property stood in her name?

A. It did at that time. In fact, I believe she bought it from me. I owned the property originally and sold it to Mrs. Vogel and then negotiated and built the building for her.

Q. Did you have any understanding of whom you were building it for?

A. I was building it for Mrs. Vogel.

Mr. Calhoun: No further questions. [111]

Cross Examination

Q. (By Mr. Resnik): When did Mrs. Vogel first acquire the property from you?

A. Well, I would say somewhere around seven years ago, if I recall right. I don't know exactly. I bought the property originally myself when the tract was first built in Anse Vista. I was the original owner of that property, after it was developed on that cemetery property up there.

Q. It could have been around May 1950?

A. It could have.

Q. Did Mrs. Vogel buy the lot from you?

A. She bought the lot from me, yes.

(Testimony of Arthur M. Hardy.)

Q. And then you designed an apartment house that went on it? A. That is correct.

Q. Do you know where Mrs. Vogel acquired the money for you to buy the lot?

A. I have no idea.

Q. Do you know where she got the money to buy the building, to have the building built, that went on it? A. I have no idea.

Mr. Resnik: That is all.

Mr. Calhoun: No further questions.

The Court: You are excused. [112]

(Witness excused.)

Whereupon

WALLACE O'CONNELL

a witness called by and on behalf of the Petitioners, having been previously sworn, resumed his testimony as follows:

Mr. Calhoun: I have no further questions of Mr. O'Connell.

Cross Examination

Q. (By Mr. Resnik): If you had researched the question and written an opinion with reference to transmutation of property, wouldn't your files reflect that?

A. If I had written an opinion, it would, but I may have given an opinion without writing it, just expressed the opinion of necessity, and I have no recollection of having done so or not having done so.

(Testimony of Wallace O'Connell.)

Q. Did you assist in the preparation of the income tax returns of the Vogels prior to Mr. Vogel's death? A. No.

Q. Were you familiar with how they reported their income for tax purposes?

A. No, I never was.

Q. Did you have any discussions with Mr. Skinner as to how the estate tax return should be prepared after Mr. Vogel's death? [113]

A. As far as our office was concerned, I was the one primarily engaged in the problems of the probate, and Mr. Skinner and I conversed on several occasions, and I think the upshot of our discussions was that it would be to the best interests of the family to call in someone certainly more expert than our office in matters of taxes and I think it was the concensus of Mr. Skinner and myself that Mr. Jacobs was brought into the picture, Mr. Tevis Jacobs, and following that we did no original thinking whatever on the question of returns.

Q. I show you, Mr. O'Connell, Petitioner's Exhibit 16 in evidence and ask you if you will read for us the third and fourth and fifth and sixth sentences appearing on that page.

A. These, of course, are scattered, shorthand almost, you might say. It says, "Eliz (meaning Elizabeth), Jr. and Sr. own one-third each—some time ago. Elizabeth received one-half of Senior's two-thirds, but no agreement to take in lieu of com prop (community property, I would say) strictly

(Testimony of Wallace O'Connell.)

speaking, Eliz". I am sorry, I don't know what that means, other than what it says.

Q. It does say that there was no agreement between them, isn't that clear?

Mr. Calhoun: It doesn't say that at all.

Mr. Resnik: Please, Mr. Calhoun. I am asking the witness the question. He shall answer it. [114]

The Witness: I shall try.

Mr. Calhoun: I would not want him misled as to what it does and what it doesn't say.

A. "But no agreement to take in lieu of community property," I don't know what that may mean at this time.

Q. (By Mr. Resnik): Did you meet with Mr. Vogel at any time in connection with the preparation of the executed will or the—an executed will?

A. I will say, I did not see Mr. Vogel in connection with the executed will. At that time I was an employee in the office. I am uncertain whether I may not have witnessed the will, and I may have been responsible for the language, particularly of the trust provisions. I don't believe I discussed it at all with him. The second time, yes, I did take a larger part in it, although I don't believe I was present at discussions in the office. I believe I talked to Mr. Vogel on the telephone on one or two occasions regarding specific matters, not the over-all picture, and certainly, I would say, not in connection with anything that has been discussed here this morning.

Q. So that you received no firsthand knowledge

(Testimony of Wallace O'Connell.)

from Mr. Vogel with reference to the character of the property held by the Vogels at the time you were considering a drafting of the will?

A. I would say not. I would say that all of my information [115] came from Mr. Partridge in summation to me and I wrote it up as I understood it to be.

Mr. Resnik: I have no further questions at this time.

Redirect Examination

Q. (By Mr. Calhoun): In the first will, the one that was admitted to probate, there was the right of election to take into the will in lieu of community property, was there not?

Mr. Resnik: I believe this goes beyond the scope of the cross examination. Furthermore, the witness testified that he had no communication with the Vogels as to the drafting of the first will, since he was only an employee in the office.

Mr. Calhoun: If your Honor please, the purpose of that—

Mr. Resnik: I will stipulate as to what the will shows. It is in evidence, your Honor.

Mr. Calhoun: The purpose of that, he was referring to some notes, and I don't know whether you have those notes, Mr. Resnik—

The Court: Counsel approach the bench.

I have to leave promptly at 4 o'clock this evening. Do you think you can finish before 4 o'clock, before that time?

(Testimony of Wallace O'Connell.)

Mr. Resnik: No, sir, we cannot.

Mr. Resnik: Ten o'clock tomorrow morning?

The Court: Nine-thirty. [116]

Q. (By Mr. Calhoun): The proposed will, since there was separate property mentioned in there, had no provision in it to elect as to separate property?

A. The one that Mr. Vogel had at the time he died?

Q. Which he hadn't executed.

A. Your question is?

Q. I will reframe it. In the first will, there was a provision in which the spouse could elect, either take into the will in lieu of community property or take her community property, right? A. Yes.

Q. In the second will, you have stated in there the property is separate, in paragraph 4, so there would be no need for such a provision, isn't that true?

A. Well, that is what paragraph 4 of the proposed will and of Mrs. Vogel's proposed will, both concurred—

Q. With that in mind, with regard to your notes, right above No. 1, on Petitioner's 16, would that have any reference to that particular elimination of that provision?

A. I can't answer that. I am sorry.

Q. Will you read what that says?

A. It says "Strictly speaking (comma), election."

Q. Read the beginning of it.

(Testimony of Wallace O'Connell.)

A. Oh, yes. What I read before, "Elizabeth, Junior [117] and Senior own one-third each, sometime ago. Elizabeth received one-half of Senior's two-thirds but no agreement to take in lieu of com prop (community property). Strictly speaking, election."

Q. You don't know any more than you did at first?

A. No. The wills as finally prepared are the upshot of my knowledge and understanding.

Mr. Calhoun: No further questions.

Recross Examination

Q. (By Mr. Resnik): Did you prepare a will for Mrs. Vogel in 1946? A. No, sir.

Q. You testified that a proposed will for Mrs. Vogel was prepared at the time of the drafting of the second and unexecuted will?

A. Roughly, the preparation of it arose out of the same conferences and discussions had and it was prepared roughly at the same time—if I am not mistaken, I got hers out before his.

Q. Do you have a copy of that with you?

A. Yes, I do. That was sent to her by Mr. Partridge and then at the death of Mr. Vogel—that wasn't completed, either, that is.

Mr. Resnik: We will offer as a joint exhibit the unexecuted will drawn up by Partridge and O'Connell, the [118] unexecuted will of Elizabeth Vogel.

The Court: It may be received.

The Clerk: Exhibit H-17.

(Testimony of Wallace O'Connell.)

(Respondent-Petitioner's Joint Exhibit No. H-17 was marked for identification and was received in evidence.)

Q. (By Mr. Resnik): At the time that you drafted the will of Mrs. Vogel, Exhibit H-17, did you have any discussions with her?

A. Yes, I think, I believe so, in the presence of Mr. Partridge and Mr. Vogel, Sr. They consulted together on at least one occasion with Mrs. Vogel in the office and I was there, and there were a number of consultations with Mr. Vogel.

Q. Did you make inquiry of Mrs. Vogel or Mr. Vogel as to whether or not any written agreement converting community to separate property had been made?

A. I made none such. I don't remember any such being made.

Q. Was any such agreement ever handed you?

A. No.

Q. Was any such agreement prepared by you or your firm? A. None.

Mr. Resnik: I have no further questions.

Further Redirect Examination

Q. (By Mr. Calhoun): That agreement, for the record, page 1, the original [119] and the copy were found together, and there was never assembled into two separate copies the proposed will for Mrs. Les Vogel, isn't that true?

A. That is true, yes. There is in the file here a

(Testimony of Wallace O'Connell.)

letter forwarding to Mrs. Vogel a copy of the draft on the date of July 14, 1950.

Q. And Mr. Vogel died August 16, 1950, isn't that true?

A. I am not certain of the date. It was in the early fall of 1950. He had had his copy of the will, as I recall, a month or so, and I called him one day and he said he would be down, he would be down, and a week later he was dead.

Mr. Calhoun: I have no further questions.

The Court: You are excused.

(Witness excused.)

The Court: We will suspend until 9:30 tomorrow morning.

(Whereupon, at 3:40 o'clock p.m., Thursday, June 20, 1957, the hearing in the above-entitled matter was recessed, to reconvene tomorrow, Friday, June 21, 1957, at 9:30 o'clock a.m.)

Friday, June 21, 1957

Proceedings

The Clerk: The Court is now in session, Judge Van Fossan presiding.

Mr. Calhoun: Mrs. Vogel, will you resume the stand, please?

The Court: The oath that you have taken obtains throughout the hearing.

Mr. Calhoun: I would like to introduce a copy of the estate tax return in evidence.

Mr. Resnik: No objection, your Honor, to the copy being received.

The Clerk: Petitioner's Exhibit 18 admitted in evidence.

(Petitioner's Exhibit No. 18 was marked for identification and was received in evidence.)

Mr. Calhoun: I would like also to introduce in evidence a copy of a document entitled "In the Matter of the Estate of J. Leslie Vogel, Probate No. 118643, First and Final Report of Executors," et cetera.

Mr. Resnik: We have no objection to the receipt of a copy of such report, if your Honor please. We do not believe that it has any materiality to the issues in this proceeding. Further, we do not believe that the document is self-proving in itself. It merely states what the Executors did, and of course couldn't resolve the issue in this proceeding. [123]

Mr. Calhoun: If your Honor please, that is not the purpose. The purpose is that in any estate, as far as taxwise is concerned, certain property in the inventory of the estate has a tax effect, property outside the inventory has a tax effect, and the return does not always disclose what property is in the inventory and what property is out of the inventory, and the final report shows what the executor was charged with, as being in the inventory.

The Court: It is received.

The Clerk: Petitioner's 19 in evidence.

(Petitioner's Exhibit No. 19 was marked for identification and was received in evidence.)

Mr. Calhoun: We have the affidavit concerning community property, together with what is known

as the inheritance tax affidavit; these are copies which we would like to offer.

The Court: Made by whom?

Mr. Calhoun: Made by the, one signed by Elizabeth Vogel—Elizabeth Vogel has signed both of them, as co-executrix.

The Court: Any objection?

Mr. Resnik: We do not object, again, your Honor, to the copies, nor do we object to the fact that such documents were filed for state probate proceedings and perhaps for state inheritance tax proceedings. We would say that the documents again are not self-proving, nor can they resolve [124] the issue for federal estate tax purposes, and on that basis we will object.

The Court: They will be received.

The Clerk: Petitioner's Exhibit 20 in evidence.

(Petitioner's Exhibit No. 20 was marked for identification and was received in evidence.)

Mr. Calhoun: If your Honor please, there are certain bonds listed on the return, in Schedule E of the return, under "Jointly Owned Property," it is stated in Item No. 5: "Series E U. S. Bonds, face amount \$7,050, actual value at date of death \$6,850. Standing in the name of Les Vogel or Mrs. Elizabeth Vogel." And they put the value. They then also say: "Six Series E U. S. War Bonds, face amount \$12,000, actual value at date of death \$9,920. Standing in the name of Les Vogel or Les Vogel, Jr." And there is no value put to those. It is the contention that they are not the property of the decedent.

Item No. 7: "Series E U. S. War Bonds, face amount \$22,050, actual value at date of death \$19,585. Standing in the name of Mrs. Elizabeth S. Vogel or Les Vogel." And those were listed with no value for the tax return. In other words, they were disclosed in the return, that such bonds did exist, but they were not, they were contended by the return as being non-taxable in the estate.

I would like to discuss this matter with counsel. [125] If those amounts are correct, and the names in which they stand, we would like to stipulate that they are, rather than going through all the proof of proving what they were. Is that correct?

Mr. Resnik: I am prepared to say that the bonds were standing in the names as appearing on the estate tax return schedule E. I want to satisfy myself as to the value.

The Court: I assume the lower value of these bonds was because they had not matured?

Mr. Calhoun: Face value, and they had not matured.

Mr. Resnik: If your Honor please, we are prepared to stipulate as to the matter of the value that is shown, lesser value being due apparently to the fact that they hadn't matured. However, we further wish to direct the attention of the Court to the fact that Item 6 appearing on Schedule E, Series E Bonds standing in the name of Les Vogel or Les Vogel, Jr., are not part of the subject of the controversy and have not been included, and therefore any reference to them in this proceeding is completely immaterial. We have no objection to agree-

ing to it, but we don't want the Court to be confused by our stipulation that that Item 6 is in any way brought into controversy here.

The Court: It will be received.

Mr. Calhoun: Further, the 90-day letter, on page 2, subparagraph (b), under Item 3, other miscellaneous property, [126] Schedule F, showing increase, there was included four shares of Pacific Turf Club stock, 500 shares of Pacific Gas & Electric redeemable first preferred, 467 shares of Bank of America, 217 shares Pacific Gas & Electric common, 250 shares Leslie Financing Company, also Anse Vista Apartment property, savings account Marina Branch of the Bank of America. As to the stocks, I would like to stipulate that those particular stocks stood in the name of—without prejudice to the type of property they are—they actually stood in the name of Mrs. Vogel.

Is that correct?

Mr. Resnik: No. Information in the record already with reference to the Bank of America stock, being the correspondence from the bank; we also have evidence in the record as to the Pacific Gas & Electric stocks, and I would just as well have the record reflect what the exhibits show on that.

As to the Pacific Turf Club stock, there is testimony in the record that some shares of that stock, some shares were in the name of the decedent, such testimony having been brought out by the decedent's son.

As to the savings account, Marina Branch, our stipulation covers that, I believe.

Mr. Calhoun: I am just talking about the stocks now, please. We will come to the apartment house and the savings account. You see, there were four shares of Pacific Turf [127] Club stock in the decedent's name, and also four shares in her name. That is why I am trying to clear this by stipulation, rather than go through all the proof as to that particular point.

Mr. Resnik: Of course, in this respect, your Honor, it should be pointed out that to the extent that any items of stock or other property appearing in the name of the decedent which were included in the return as his separate property were by the theory of the Respondent and by appropriate adjustment in the statutory notice reduced by one-half because under the theory of the Respondent that was held to be community property. Accordingly, if the Court were to hold the property here was in some way segregated, then the reduction as to the other items that are community property would have to be restored. The Petitioner could not be contending otherwise.

Mr. Calhoun: I agree to that. The only thing I am asking is—

Mr. Resnik: We are now prepared to agree that the items of stock appearing in Schedule F on page 2 of the statutory notice of deficiency were in the name of the decedent's widow.

The Court: Is that what you wish?

Mr. Calhoun: Yes. May that, then, be received as a stipulation, your Honor?

The Court: It may be so stipulated. [128]

Mr. Calhoun: The Anse Vista Apartment property, was that standing in her name alone?

Mr. Kubik: Yes.

Mr. Resnik: As to the Anse Vista Apartment property, your Honor, it might be significant to ascertain just how that property was held, not only in name, but in any other legend that might appear.

Mr. Calhoun: I agree with that. I am just asking if they will stipulate as far as the title of the property, it was in her name alone, and not on the decedent's and her name, it was actually in her name, irrespective of the legal effect of it, that is all, just like the bonds.

I understand that is true, Mr. Kubik.

Mr. Kubik: That is correct.

Mr. Resnik: As to the bare name alone, we will stipulate, but the stipulation does not go beyond that.

The Court: Very well.

Mr. Calhoun: As to the savings account, Marina Branch, Bank of America, that is the savings account we have stipulated as being in the name of Elizabeth Vogel.

Is that correct, Mr. Kubik?

Mr. Kubik: I didn't follow the question.

Mr. Calhoun: This savings account down here.

Mr. Kubik: That is correct. That is right.

Mr. Calhoun: Very well. [129]

Whereupon

ELIZABETH VOGEL

a witness recalled by and on behalf of the Petitioners, having been previously sworn, was examined and testified further as follows:

Direct Examination—(Resumed)

Q. (By Mr. Calhoun): Mrs. Vogel, you have heard the discussion as to certain stocks standing in your name alone. You knew, did you not, that your husband had his own separate brokerage account?

A. Yes.

Q. Do you recall the date that your brokerage account was opened with Dean Witter, or the year, as closely as you can?

A. I think it was 1948.

Q. As far as the business of Les Vogel Chevrolet Company was concerned, do you recall when you became a limited partner in January of 1943?

A. I think I wrote that down.

Q. We have stipulated as to the date the limited partnership started, Mrs. Vogel. A. What?

Q. We have stipulated, we have agreed that the date— A. That is when it was.

Q. Yes, but do you recall when you became a limited partner?

A. (No response.) [130]

Q. Do you recall, do you remember the time?

A. Yes, I do.

Q. What was your interest in the business?

A. Third interest.

(Testimony of Elizabeth Vogel.)

Q. Do you remember when the corporation was incorporated in November, November 1, 1946?

A. Yes.

Q. Did you have the stock issued in your name, as to your interest? A. Yes.

Q. And you still have that stock, do you not?

A. Yes.

Q. Do you maintain that that stock is yours, or not?

A. I will maintain that it is Les, Jr.'s from the beginning, and it is his now, as far as I am concerned.

Q. I am talking about your stock.

A. Yes.

Q. I am asking you if you maintain that your stock in your name is your own stock.

A. Yes.

Q. And what about Les, Jr.'s stock? That is in his name? A. Yes, that is his.

Q. Did you ever make any claim to the twin-screw cabin cruiser? Did you personally, as your own separate property, [131] make any claim to the cabin cruiser?

Mr. Resnik: I object, your Honor. It calls for an opinion and conclusion of the witness as to the nature of the property, which she hasn't been qualified to testify on.

The Court: Overruled.

A. Everybody kicks about the boat and—

Q. (By Mr. Calhoun): I am asking you to answer my question. Please answer my question. Did

(Testimony of Elizabeth Vogel.)

you make any claim personally as to the twin screw cabin cruiser? A. Yes.

Q. Do you claim that that cruiser was yours, or was that your husband's? Was that your husband's or yours? A. I think it's all of ours.

Q. You rode in it, but was it his or yours?

Mr. Resnik: I submit, the question has been asked and answered, your Honor. I object on that ground.

The Court: She may answer.

Q. (By Mr. Calhoun): Do you remember the stocks that you had in your name?

A. Yes. All the PG & E and—

Q. Those that we mentioned? A. Yes.

Q. As to the Anse Vista Apartment property, did you [132] negotiate with the builder or did your husband negotiate with him?

A. I did. He didn't want any part of it.

Q. Did you discuss that with your husband?

A. Yes, he told me I was crazy when I went ahead. I wanted to do it and I expected him in the future to go along with it, and if it wasn't for him passing on I would have had others.

About the boat, we have always had a boat.

Mr. Resnik: The witness has answered the question, your Honor, I submit.

Q. (By Mr. Calhoun): What was that you wanted to explain?

A. I wanted to say about the boat. You people don't care, even you say that is all right, but we have had a boat since we have been married, we

(Testimony of Elizabeth Vogel.)

have always had a boat hanging in the basement, and I don't see any reason at all that it shouldn't go along.

Mr. Calhoun: You may examine.

A. (Continuing): This is not something new, in a boat. We have always had one.

Cross Examination

Q. (By Mr. Resnik): Mrs. Vogel, did you ever have physical custody of the stock of the Vogel Chevrolet Company that was in your [133] name, prior to the death of your husband?

The Witness: What does he mean? I don't understand what that is.

Q. (By Mr. Resnik): Did you have physical possession of the stock certificates of the Vogel Chevrolet Company that stood in your name prior to the death of your husband?

A. I think so. I don't know what you mean. I don't know, I don't happen to be a business-woman. All I know is when I get the money in my hands.

Q. What did you do with the money when you got it in your hands? A. Pretty—

Q. What did you do with the money when it got in your hands?

A. Pretty much the way I wanted. If I wanted to give something away, I gave it. I gave my sisters and my father things, and I can spend it, as long as it's my money I can spend it the way I want.

Q. Wasn't most of the money that both you and

(Testimony of Elizabeth Vogel.)

your husband received from the business deposited in the bank accounts?

A. I spent it the way I wanted.

Q. Did you deposit any portion of the monies you received from the Vogel Chevrolet Company in the bank account? A. Yes. [134]

Q. Didn't your husband deposit the monies he received, the salaries he received?

A. I don't know what he did with his money. I never questioned him. As long as he gave me money to run the house, that is all I was interested in and that is the way, I never interfered.

Q. Don't you know that his salary checks were deposited either in the joint savings account or the joint checking account that you had with him at the bank?

A. The Marina, he had nothing to do with it. He had nothing to do with it. It was me that put his name on, I figured if anything happened to me or something like that, why, but it didn't make a bit of difference, he had a, I didn't even know he had a bank at Polk Street, I didn't know until afterwards. But he never used the Marina Branch.

Q. Didn't you draw a check on the joint checking account to make the payment on the Anse Vista property?

A. Well, that happened to be my account, so couldn't I do what I wanted——?

Q. It was a joint account, was it not?

A. It isn't a joint account. I put his name on it. He never used it.

(Testimony of Elizabeth Vogel.)

Q. He never drew any checks on the checking account? A. Not one. He never used it.

Mr. Calhoun: If your Honor please, the term "joint [135] account" has two meanings. I will object to a legal conclusion as to a joint account. I think we can say the name the way it stood, in the name of the party.

The Court: Your objection is overruled.

Mr. Calhoun: We have stipulated that this checking account stood in the name of Mrs. Les Vogel and Les Vogel.

Is that it?

The Witness: Yes.

A. (Continuing): Well, I was the one who opened the account. You can go to the bank and check it, but he never used the account.

Q. (By Mr. Resnik): Did you invest in any real estate prior to the Anse Vista Apartment House? A. (No response.)

The Court: Do you understand the question?

The Witness: No.

The Court: The question is very simple.

Read it, Mr. Reporter.

(Last question read.)

A. Anse Vista, no. But I did give money to my sister to pay some things. But it is in her name.

Mr. Resnik: I move that the last remark be stricken as non-responsive.

The Witness: Well, it has nothing to do with the [136] case.

The Court: It will be stricken.

(Testimony of Elizabeth Vogel.)

The Witness: If I want to give something away, I give it.

Mr. Resnik: I move that that remark be stricken and that the witness be instructed to answer the question.

The Court: It will be stricken.

Can you answer the question as it was put to you?

The Witness: Yes. Well, I gave some money to my sister to buy something.

The Court: It is not a question of giving something. It is a question of, did you invest in real estate?

The Witness: No.

Q. (By Mr. Resnik): How was the lot, the site selected, on which the Anse Vista Apartment House was constructed?

A. Arthur Hardy is a friend of ours, and I liked the lot, and I liked the view up there, and I talked him out of it. He was going to build a house for himself there, and I talked him out of it. After I bought it, why, he wanted to buy it back from me and I wouldn't let him. My husband told me if I wanted to invest in things, invest in business property. He kept telling me that, but—

Q. Mr. Hardy was a friend of the family?

A. Yes. [137]

Q. A friend of your husband?

A. An old friend for years.

Q. A friend of long years' standing?

A. Yes.

(Testimony of Elizabeth Vogel.)

Q. Of both you and your husband?

A. Yes.

Q. When you were questioned by Mr. Calhoun, you stated that if it wasn't for the death of your husband you would have had other properties. Can you explain how the death of your husband changed that?

A. Well, I wanted to have, go up the river and buy some places so we could, when we took the boat out, that we could get little places up the river and across the Bay, over at Belvedere, so we could have weekend places. And everybody says, "You shouldn't have a boat." We have always had a boat. Lots of people like nightclubs. Somebody else likes something else. And my husband went in with this man, he was partners with this man in the boat, and before that we always had smaller boats. And they say, "Oh, you shouldn't have it." Well, a lot of people have Cadillacs. We have never had a Cadillac. Les has a lot of used ones. Nobody thinks anything about a person having a Cadillac.

The Court: Don't volunteer anything. Answer the questions and not any more.

The Witness: Yes, your Honor. [138]

Q. (By Mr. Resnik): Do you recall a meeting that you had with Mr. Kubik, sitting at the counsel table at my right, such a meeting having taken place in the office of Mr. Jacobs in December of 1954?

A. Yes, and I will have to tell you—yes.

(Testimony of Elizabeth Vogel.)

Q. Do you recall that present at that meeting, in addition to yourself and Mr. Kubik——

A. Yes.

Q. (Continuing): ——was your son?

A. Yes.

Q. Les Vogel, Jr., and Mr. Jacobs?

A. No. Mr. Kubik came in there when I was at Jacobs' office alone. Les wasn't in there with him. And from there he went right out to the bank with me. That is the first time I met him. He wasn't in the office with Les, Jr. It was just Mr. Jacobs, I was in talking to Mr. Jacobs and Mr. Kubik came in. The three of us were there together.

Q. Do you recall that your son came in later after the discussion had gone on for a little while?

A. Yes.

Q. So that he was present during some part of it? A. Yes, that is right.

Q. Do you recall that at that time there was discussion between you and Mr. Kubik regarding the Anse Vista property? [139]

A. Yes. I know the other day you said Les said I talked too much about it. He always tells me I talk too much. He is telling me now to keep still.

Q. Do you recall at that time that you stated to Mr. Kubik that in addition to the property that appeared in the name of your husband, that that was reported on the estate tax return, that there was also this Anse Vista property that stood in your name, but notwithstanding that, it really was the property of you and your husband?

(Testimony of Elizabeth Vogel.)

A. If I said that—I wouldn't say it.

Q. I am asking you whether you said it.

A. I am sure I didn't. I think it was misconstrued.

Q. Do you recall that you said it not only on one occasion but more than one occasion, even after your son told you to keep quiet?

A. I don't think he said it for that. I was talking like I am doing now.

Q. I am asking you whether you recall—

A. I know he told me to keep quiet, but it wasn't for that.

Q. Do you recall telling Mr. Kubik about the Anse Vista property?

A. I don't know why I would. He had all the papers and everything there when he went out to the bank with me.

Q. He went out to the bank with you after he talked [140] with you at Mr. Jacobs' office, didn't he?

A. Yes. We went right out there and I handed him over everything.

Q. There was no reference to the Anse Vista property on the estate tax return, was there?

A. On the what?

Q. On the estate tax return of the Les Vogel estate.

A. It might have been on there, I don't know. But there is no reason why it should have been. They put everything down, didn't they? It should come off.

(Testimony of Elizabeth Vogel.)

The Court: Do you have considerable more cross examination?

Mr. Resnik: Yes, your Honor.

The Court: We will suspend at this time and call the calendar of the cases set for this afternoon.

The Clerk: Mrs. Vogel, you may take your seat. We are going to call other cases set for settlement stipulation.

The Witness: All right. Thank you.

(Whereupon, at 10:00 a.m. the hearing in the above-entitled matter was suspended until 10:15 a.m. of the same day.)

The Court: We will resume with the Vogel case. Mrs. Vogel, will you resume the stand.

Whereupon

ELIZABETH VOGEL

resumed her testimony as follows: [141]

Cross Examination—(Resumed)

Q. (By Mr. Resnik): Mrs. Vogel, I was asking you with reference to the meeting you had with Mr. Kubik at the office of your attorney Mr. Jacobs. At that time didn't you tell Mr. Kubik that the Anse Vista property in San Francisco stood in your name? A. Yes.

Q. Didn't you tell him at that time that, although the property stood in your name, it was really the property of both you and your late husband, you and Les Vogel, Sr.?

(Testimony of Elizabeth Vogel.)

A. No, I would say it was the whole family's, as far as I am concerned.

Q. Did you receive any money by gift or inheritance between 1940 and 1950?

A. '40? I don't know. Not then.

Q. You stated yesterday in reply to questions by Mr. Calhoun that among the items necessary in the household expense after your husband died was that spent for entertainment purposes. Do you recall that?

A. Well, no. I said it was for household use.

Q. And that you entertained at the house?

A. Yes.

Q. Because of—

A. I entertain a lot. But I did make a mistake yesterday when I said 14 rooms. You know, when the Japanese man [142] comes, he always 14 rooms. After I got home last night I thought it's eight rooms, with the bathrooms—and the bathrooms, but they put it down when they charge you.

Q. It is an eight-room house?

A. Yes. And they put it down.

Mr. Calhoun: You mean plus the bathrooms, that makes it fourteen, is that right?

Q. (By Mr. Resnik): You mean there are six bathrooms in the house?

A. Yes. Well, that is how they count, you know, doing a room or something. I am sorry, that is the way I said it. That is the way he puts it down on the paper. At the time I wasn't telling an untruth.

(Testimony of Elizabeth Vogel.)

The Court: Do you mean to tell us there are six bathrooms in the house?

The Witness: There are five bathrooms in the house. You see, what he includes is the garage, I guess, too.

Q. (By Mr. Resnik): So there are eight rooms and five bathrooms? A. Yes.

Q. And your son and daughter live with you at the house? A. At the time, yes.

Q. How soon after the death of your husband did you recommence entertaining?

A. Well, personal friends, personal friends right away. [143] We have a lot of very close friends.

Q. Didn't Mr. Kubik ask you at the interview we have previously identified how much it cost to run the house during the lifetime of Mr. Vogel and you said you didn't know how much it was?

A. No. I spend what I want.

Q. I show you, Mrs. Vogel, a packet of five checks marked Exhibit 11. I believe you stated that those were the checks that you received for family allowance.

A. Well, it was my money. Why shouldn't I? And I don't think Judge Fitzpatrick would have given it if—

The Court: Just a moment.

Mrs. Vogel, just answer the questions and don't volunteer your statements.

The Witness: All right, your Honor.

Q. (By Mr. Resnik): I have asked you whether

(Testimony of Elizabeth Vogel.)

you received these as the checks for your family allowance.

A. I don't know what I received these for, but I guess I got them. I will have to check them.

Q. You don't know?

A. I—was it for family allowance, all those?

Q. I asked you the question and you answered it, Mrs. Vogel. I have no information other than what you give us here in Court. [144]

The Witness: Can you see those, Mr. Calhoun?

Mr. Resnik: Your Honor—

The Court: Just a moment. Your lawyer is trying the case.

Q. (By Mr. Resnik): You were asked, Mrs. Vogel, by Mr. Calhoun with reference to certain stocks that were in your name. Do you know when there was purchased the Bank of America stock?

A. When I opened my accounts?

Q. Do you know how many shares you bought?

A. I don't know now. Here I have made a note. I have four shares of—what stock do you want? Four hundred sixty-seven of Bank of America.

Q. What are you referring to, Mrs. Vogel? You have a paper in your hand? A. Yes, here.

Q. What is that that you are referring to?

A. This here?

Q. Yes. What is that?

A. This is the ones I checked.

Q. No. What is the nature of the paper that you have before you?

A. This is my book, just a book I wrote on.

(Testimony of Elizabeth Vogel.)

Q. When did you make that entry of these stocks?

A. I wrote them down to see that I had them.

Q. When did you write it down?

A. When did I write these down?

Q. Yes.

A. Well, yesterday at noon time. I wrote them down then. It was on the list. We went over them.

Q. With whom?

A. With our attorney, Mr. Calhoun.

Mr. Calhoun: I will stipulate to that.

Mr. Resnik: The testimony of the witness is sufficient for my purposes.

Q. (By Mr. Resnik): From what source did you obtain the funds with which to make the payment for the Bank of America stock?

A. With money I saved.

Q. Was it in the checking account that you had?

A. I made, I paid the first down payment with a check from the bank, yes.

Q. From the checking account?

A. For the lot, first. Then I paid five times on it, and that is the way you can check, at the bank.

Q. Did you always pay by check?

A. Yes.

Q. That was your common practice in other respects also, to make various payments by check?

A. Not always. [146]

Q. Did you have a lot of cash around the house?

A. No.

(Testimony of Elizabeth Vogel.)

Q. Do you recall filling both federal and state income tax returns?

A. I let the business take care of that. I am not a business woman.

Q. You let who take care of that?

A. The what?

Q. I didn't hear your answer.

A. I let them take care of it. That is why they got—

Q. Who do you mean by "them"?

A. I write down everything. The business.

The Court: Can you answer the question? Who do you mean by "them"? Do you mean your attorney, your son or whom?

The Witness: I don't know.

Q. (By Mr. Resnik): It has been stipulated, Mrs. Vogel, in paragraph 3 of the stipulation, that there was a resolution contained in the corporate minutes of the Les Vogel Chevrolet Company that there was a resolution that the assets of the corporation be transferred to Les Vogel as of midnight December 31, 1942. Did you attend the meeting at which such resolution was passed?

A. I don't know.

Q. Do you know when that meeting took place?

A. Yes.

Q. When did the meeting take place?

A. Well, if you said it was in 1942, that is when it was.

Q. Did you ever receive any distributions from the business while it was a partnership?

(Testimony of Elizabeth Vogel.)

A. I don't know.

Q. Do you recall telling Mr. Kubik that you didn't believe that you received any?

A. I don't remember.

Mr. Resnik: I have no further questions at this time.

The Court: You may inquire.

Redirect Examination

Q. (By Mr. Calhoun): Mrs. Vogel, do you know what a distribution is? A. Yes.

Q. What is it?

A. Well, you get your share.

Q. Did you get your share—your share of what?

A. Share of Les Vogel Finance Company?

Q. No. I am talking about, do you know what a distribution is?

A. I don't worry about—I am not a business-woman.

Q. I am asking you, answer my question, do you know what a distribution is? A. Yes.

Q. What is it? Just to be sure we are talking about [148] the same thing, what is it?

A. I don't know what it is.

Q. You just said you did. I want to know whether you do or don't. Do you?

A. Assuming that—

Mr. Resnik: I submit that counsel is arguing with his own witness.

Mr. Calhoun: I am just asking to clarify.

The Witness: Yes.

(Testimony of Elizabeth Vogel.)

Q. (By Mr. Calhoun): Assuming a distribution means money, did you get money? A. Yes.

Mr. Resnik: I move that that answer be stricken.

The Witness: Then I will say it to you.

Mr. Resnik: It is obviously leading on its face.

Mr. Resnik: I move that be stricken as a volunteered statement.

The Court: Motion denied.

Q. (By Mr. Calhoun): So there is no confusion, the checks that counsel handed you, that this attorney over here handed you a little while ago, are the same checks that I gave you yesterday?

A. Yes.

Q. Are those the checks for your family allowance?

A. No, it was for, that was for, wasn't that for a share of—— [149]

Q. These checks that I showed you yesterday, do you remember, when we were discussing a family allowance? A. Yes.

Q. Did you receive a family allowance of \$1,500 a month? A. Yes.

Q. You got the money, didn't you?

A. Yes.

Q. You cashed the checks? A. Yes.

Q. Assuming that these are checks made out for the total of that amount, from the estate of Les Vogel, do you know whether or not those are the same checks you received?

A. Yes, they are.

(Testimony of Elizabeth Vogel.)

Mr. Resnik: I object, your Honor, as improper on its face.

The Witness: You said it was a family allowance—

Mr. Calhoun (interrupting): Keep quiet, Mrs. Vogel.

Mr. Resnik: I ask that the reporter read the question, starting with the word "Assuming."

Mr. Calhoun: I asked if she knew whether or not—I will ask to have the question read back.

The Court: What was the question?

(Last question read.)

The Court: The answer may stand. [150]

Q. (By Mr. Calhoun): Also for your living expenses during this period when you were receiving the family allowance did you buy any clothes?

A. Yes. I needed a lot of them.

Q. Did you buy any clothes in Texas?

A. Yes.

Q. What did you buy?

A. A couple of fur coats.

Q. What were they?

A. A couple of minks.

Q. What did they cost you, do you remember?

A. I don't know.

Q. Give you best estimate, if you have any idea.

A. About \$1,500 apiece, or \$1,800. I don't know.

Q. Where did you buy them?

A. Neiman & Marcus.

Mr. Calhoun: That is all.

(Testimony of Elizabeth Vogel.)

Recross Examination

Q. (By Mr. Resnik): When did you purchase the fur coats, Mrs. Vogel?

A. When we went to the Motor Car Dealers' Convention.

Q. When was that?

A. Well, 1951, wasn't it? Something like that, I think.

Q. What part of 1951?

A. Well—or it was the end of 1950, wasn't it? End of [151] 1950.

Q. What year did you purchase the fur coats, Mrs. Vogel? A. It was in 1950.

Q. How many did you purchase?

A. A couple of them.

Q. Were they the same? A. No, no.

Q. How many mink coats did you own prior to the death of your husband?

A. I had three. I gave them to my sister. She needed them. She didn't have any.

Q. When was the first of those three coats purchased? A. When was the first—what?

Q. When was the first of the three coats purchased, of the three coats that you had during the lifetime of your husband?

A. Oh, no, they weren't mink; they were something else.

Q. What were they?

A. One was seal.

Q. When was that purchased?

(Testimony of Elizabeth Vogel.)

A. Oh, years ago. You know, they last so long. You have them a lifetime.

Q. How much did you pay for it?

A. I forget.

Q. What was the other two coats?

A. These were years ago. [152]

Q. What were they, what type of fur?

A. I forget what you call them.

Q. How long prior to the death of your husband did you acquire the last one? A. Before?

Q. Yes.

A. Oh, about 10 years. They get pretty shabby in that time.

Q. I show you, Mrs. Vogel, Petitioner's Exhibit 11, a packet of five checks that have been handed you previously. Do you know what those checks were given to you for?

A. Yes, for the settling of the estate, I think it was. See?

Q. For your distributed share of the estate?

A. Yes.

Q. With whom did you attend the Motor Dealers' Convention in Texas?

A. With my daughter, my son and myself. We went away because—it was the same year my husband passed away.

Q. Do you know what month in that year your husband passed away?

A. Yes, I do. And I think the Motor Car Dealers was two months later, wasn't it? Something like that.

(Testimony of Elizabeth Vogel.)

Q. Did you pay all the expenses for that trip?

A. I don't remember. [153]

Mr. Resnik: I have no further questions at this time.

Mr. Calhoun: I have no further questions at this time.

The Court: You are excused.

(Witness excused.)

Mr. Calhoun: I would like to recall Mr. Vogel at this time.

J. LESLIE VOGEL, JR.

a witness recalled by and on behalf of the Petitioners, having been previously sworn, was examined and testified further as follows:

Redirect Examination

Q. (By Mr. Calhoun): Mr. Vogel, you have already been sworn and you are still under oath. You understand that, do you? A. Yes.

Q. I want to ask you what the attorney's fees were that were paid to Mr. Tevis Jacobs for the tax matter that he has handled for the estate, if you know.

Mr. Resnik: I object, your Honor. I don't believe it has any relevance or materiality to the issues. There is no issue raised in the pleadings.

Mr. Calhoun: This is subsequent. Attorney's fees are deductible, in the estate. [154]

The Court: Proceed.

Q. (By Mr. Calhoun): Do you know?

A. I paid him \$1,000.

(Testimony of J. Leslie Vogel, Jr.)

Q. How much has he been paid altogether?

A. Well, I think he got \$1,500 for, during the period of distribution and \$1,000 subsequently.

Q. He has received \$2,500 altogether, is that correct? A. Yes.

Q. And you have paid me a thousand dollars retainer in this case? A. Yes.

Q. Before I knew what I was getting into.

Do you recall the trip to the Motor Car Dealers' Convention that you took with your mother, which she has testified to? A. Yes, sir.

Q. When was that?

A. It was January 1951.

Q. Do you recall her buying the coats?

A. We were returning from the convention and stopped in Texas and she purchased them.

Mr. Calhoun: I have no further questions.

Recross Examination [155]

Q. (By Mr. Resnik): You have testified that you paid Tevis Jacobs \$1,000? A. Yes, sir.

Q. Was that of your own personal funds?

A. Yes.

Q. What was the basis of the payment, what services had he rendered or was he committed to render?

A. In an effort to bring about a settlement of this case, he told me that he had been working at great lengths and was entitled to additional compensation.

Q. Now, you say that you think a payment of

(Testimony of J. Leslie Vogel, Jr.)

\$1,500 had been made to him previously thereto. Do you have a check to show that payment?

A. No, sir.

Q. Do you know how that payment was made to him?

A. Isn't there a—I don't know.

Q. Do you know who made the payment to him?

A. Could it have been awarded by the Court?

Q. I don't know, Mr. Vogel.

A. I don't know.

Q. You don't know. So that you don't know about the \$1,500 payment at all? You just think that there might have been such a thing?

A. Yes, sir.

Q. As to the thousand-dollar payment to Mr. Calhoun, was that paid by check? [156]

A. Yes, sir.

Mr. Resnik: I have no further questions.

Further Redirect Examination

Q. (By Mr. Calhoun): Did you pay that on behalf of the estate or yourself or what, to me?

A. I advanced it on behalf of the estate.

Further Recross Examination

Q. (By Mr. Resnik): Do you know whether this estate is still open in the Probate Court?

A. It's been distributed, hasn't it?

Q. Closed? A. Yes.

Q. So you say, when you made the payment on behalf of the estate, what do you mean by that?

(Testimony of J. Leslie Vogel, Jr.)

A. I was drawing an assumption that this is part of the estate is why we are here. Maybe I am wrong in my assumption.

Q. From whom would you get reimbursement, if the distribution had been made?

A. The Crocker-Anglo Bank, my mother as the recipient of the distribution of the estate.

Q. Did your mother agree to reimburse you from the Crocker-Anglo Bank?

A. I didn't discuss it with her. [157]

Q. Did you discuss it with the Crocker-Anglo Bank?

A. I informed them we were going into Tax Court. They have my sister's trust, and while they have complete jurisdiction over it, they just counsel with me, and I think what they are doing is right. They are the absolute administrators of her trust, and they wanted to sell some stocks.

Mr. Resnik: I submit that the answer is non-responsive to the question.

The Witness: You asked me—well, all right.

Q. (By Mr. Resnik): Did the Crocker-Anglo Bank give you any money out of your sister's trust?

A. Nothing.

Mr. Resnik: I have no further questions at this time.

The Court: You are excused.

(Witness excused.)

Mr. Calhoun: Mr. Skinner.

Whereupon

VIRGIL G. SKINNER

a witness called by and on behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record.

The Witness: Virgil G. Skinner, 68 Post Street.

Direct Examination

Q. (By Mr. Calhoun): You are an attorney-at-law, are you not? A. Yes, sir.

Q. And you have handled the partnership incorporation affairs of the Les Vogel Chevrolet Company, is that right? A. Yes, sir.

Q. Is it true that Mr. Partridge and Mr. O'Connell have been the personal attorneys for Mr. Vogel?

A. Yes.

Q. Did you prepare the limited partnership agreement which was effective as of January 1, 1943? A. Both of them.

Q. And the general partnership agreement that followed that?

A. The second limited partnership agreement. There was no general partnership agreement.

Q. I mean the one where, I am sorry, where Les Vogel, Jr., became a general partner?

A. Yes.

Q. And did you discuss that matter with both Mr. and Mrs. Vogel, as to the separation of the interest of one-third to Les, Jr., Mr. Skinner?

Mr. Resnik: I object to that, your Honor. The question is leading on its face. If counsel wants to

(Testimony of Virgil G. Skinner.)

know what went on, he can ask what discussions were held and lay a [159] proper foundation for such.

The Court: The question was leading.

Q. (By Mr. Calhoun): Did you have discussions with anybody concerning the formation of this partnership? A. Yes.

Q. Who did you discuss the matter with?

A. Principally with Les Vogel.

Q. With anyone else at all?

A. I think that I explained the setup and what was being done to Mrs. Vogel, and I think also to Les, Jr.

Q. Did you prepare the incorporation of the company November 1, 1946? A. I did.

Q. Do you know of your own knowledge that the stock was issued three ways? A. I do.

Q. You are the secretary of the company?

A. I am.

Q. And you so are today? A. Still am.

Mr. Calhoun: No further questions.

Cross Examination

Q. (By Mr. Resnik): Mr. Skinner, you said you discussed the formation [160] of the limited partnership with Les Vogel, Jr. Do you recall that Les, Jr., was in the Army during that time?

A. I said I thought I did. I think I talked to him, not in detail, item by item of the contract, but in general what it was, at sometime when he was in San Francisco.

(Testimony of Virgil G. Skinner.)

Q. When did you have your discussion with Les Vogel that you referred to?

A. Latter part of 1942.

Q. Do you have with you the copies of the partnership agreements that you prepared?

A. I have here my office copy of the original certificate of limited partnership which was drawn at that time and signed, I believe, ultimately, I believe, in February of '43. I will say an original of that document is on file in the Office of the County Clerk in San Francisco, also of record in the Office of the County Recorder, San Francisco.

Q. Wasn't there a resolution sometime in 1942 leading to the dissolution of the Chevrolet Corporation at that time and the statement that all of the assets were to be distributed, that all the assets were to be transferred to Les Vogel?

A. Yes. I wrote that resolution up on the closing merely as a vehicle to carry through to the limited partnership.

Mr. Resnik: No further questions.

Redirect Examination

Q. (By Mr. Calhoun): Do you have an extra copy of that limited partnership agreement?

A. This is my office copy. There was also a copy of the amended certificate which was filed in 1945.

These two are the affidavits of publication on the certificate of fictitious name which accompanies those.

(Testimony of Virgil G. Skinner.)

Mr. Resnik: Is the reporter taking down what has been said?

The Reporter: Yes.

Mr. Resnik: I would like it read.

Mr. Calhoun: He said that——

Mr. Resnik (interrupting): I will have the reporter read it, please.

(Last question and answer read.)

Mr. Calhoun: I would like to have these marked for identification.

The Clerk: Petitioner's Exhibit 21 for identification.

(Petitioner's Exhibit No. 21 was marked for identification.)

The Clerk: A document headed "Les Vogel Chevrolet Company, Certificate of Limited Partnership".

Mr. Calhoun: I would like to attach this to that, all at once.

The Clerk: With an affidavit dated May 11, 1943, attached. [162]

The Court: Further questions?

Mr. Calhoun: I want to identify these and ask that they be received in evidence.

The Clerk: Petitioner's Exhibit 22 for identification, a document headed "Les Vogel Chevrolet Company, Amended Certificate of Limited Partnership," with affidavit dated October 24, 1945, attached.

(Petitioner's Exhibit No. 22 was marked for identification.)

Q. (By Mr. Calhoun): Handing you the Peti-

(Testimony of Virgil G. Skinner.)

tioner's Exhibit 21, is that the original copy of, original certificate of limited partnership and the affidavit?

A. It is my office copy of the certificate of limited partnership and the copy of the affidavit of publication which was furnished to me by the recorder.

Mr. Calhoun: I would like to offer that.

Mr. Resnik: I would like to ask the purpose of the offer, in view of the comprehensive stipulation which we have.

Mr. Calhoun: It shows in more detail how it was done and it is cumulative to show that it was consistent with the stipulation and shows the division into three separate parts verly clearly.

The Court: It will be received as Exhibit 21.

The Clerk: Petitioner's Exhibit 21 in evidence.

(Petitioner's Exhibit No. 21 was received in evidence.) [163]

Q. (By Mr. Calhoun): Handing you Petitioner's Exhibit 22 for identification, is this the amended certificate and the affidavit of publication of the amended certificate of limited partnership?

A. This is my office copy of the amended certificate of limited partnership which was filed, and also a copy of the affidavit of publication of the certificate furnished me by the recorder.

Mr. Calhoun: I offer this in evidence as Petitioner's Exhibit No. 22.

The Court: It will be received.

(Petitioner's Exhibit No. 22 was received in evidence.)

Mr. Calhoun: I have no further questions.

Mr. Resnik: I have no further questions.

The Court: You are excused.

(Witness excused.)

The Court: Have you any other witnesses?

Mr. Calhoun: I have no further witnesses.

The Court: Petitioner rests?

Mr. Calhoun: Petitioner rests.

Mr. Resnik: At this time, your Honor, the Respondent desires to offer photostatic copies of original papers which are on file in the probate proceedings of the estate of decedent J. Leslie Vogel. Such probate was held in the Superior Court in and for the City and County of San Francisco.

The first document we offer is the notice of election to take under the will, signed by the widow, Elizabeth S. Vogel.

The Court: Is there any objection to these?

Mr. Calhoun: No objection.

The Court: It will be received.

The Clerk: Respondent's Exhibit I in evidence.

The Court: It is received.

(Respondent's Exhibit I was marked for identification and was received in evidence.)

Mr. Resnik: As Respondent's Exhibit next in order, we offer this photocopy of petition for authority to sell shares of corporate stock, filed in the probate proceedings, signed by the executors of the estate, Elizabeth S. Vogel and Robert G. Partridge.

The Court: It will be marked Exhibit J, and it will be received in evidence.

(Respondent's Exhibit J was marked for identification and was received in evidence.)

Mr. Resnik: Respondent's next exhibit in order is the order of the Probate Court authorizing sale of shares pursuant to the petition, the previous exhibit.

The Court: It will be received as Exhibit K.

(Respondent's Exhibit K was marked for identification and was received in evidence.)

Mr. Resnik: Respondent at this time will call Mr. Kubik.

Whereupon

EMIL W. KUBIK

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record.

The Witness: Emil W. Kubik.

Direct Examination

Q. (By Mr. Resnik): Where do you reside, Mr. Kubik?

A. 1450 Lincoln Avenue, Burlingame.

Q. What is your present position, employment?

A. I am a reviewing officer for the Estate Tax Division, U. S. Internal Revenue.

Q. How long have you been an employee of the Internal Revenue Service? A. 18 years.

Q. During what portion of that time were you delegated to estate tax work?

(Testimony of Emil W. Kubik.)

A. The entire time, with the exception of the year last passed, which was devoted to field audit.

Q. You are the agent who examined the return filed in the estate of J. Leslie Vogel, the Petitioner?

A. I am. [166]

Q. Can you outline to us briefly what steps you took in the conduct of your investigation to determine the true estate tax liability of that estate?

A. Well, I reviewed the return as filed, which is the first step, and I checked the probate records, I checked the partnership incorporation book records, made inquiries of employees who, I presume, were informed as to necessary knowledge to determine the information I was seeking, as to the facts, particularly the characterization of the property interests. I also interviewed Mrs. Vogel for the purpose of establishing the true characterization of the interests, checked bank accounts to follow the application of the funds, deposit of funds and the application of funds, insofar as it was possible withdrawal therefrom, the application, insofar as it was possible, to make a determination.

Q. In the course of your investigation did you determine that certain property owned by the Vogels appeared in the name of the decedent alone and the other appeared in the name of Mrs. Vogel alone?

A. I did not know about any asset held by Mrs. Vogel alone until the meeting in Mr. Jacobs' office, at the time I was interviewing her, when she dis-

(Testimony of Emil W. Kubik.)

closed the Anse Vista Apartments, and then she disclosed the existence of other assets.

Q. Will you tell us, to the best of your recollection, when that meeting took place? [167]

A. Sometime in December 1954.

Q. And you say the meeting took place in the office of—? A. Tevis S. Jacobs.

Q. That is the Mr. Jacobs who is one of co-counsel in this case? A. Yes.

Q. Who were present at that meeting?

A. Initially there was Mr. Jacobs and Mrs. Vogel, they were there, Mrs. Vogel was in Mr. Jacobs' office as I entered, and then Mr. Vogel, Jr., came in subsequently, so there were present the four of us, Mrs. Vogel, Mr. Jacobs, Les Vogel, Jr., and myself.

Q. I believe you stated that at the time of that interview, in December of 1954, you were not aware of the fact that there were certain assets that appeared in the name of Mrs. Vogel alone and that she made some disclosure to you with reference to Anse Vista. Will you tell us what was said?

Mr. Calhoun: I object to that question as not exactly what he said. He said he didn't know of any assets standing in the name of Mrs. Vogel alone up until that time.

The Witness: That is incorrect. I will have to correct that. Because I did have knowledge of the Chevrolet Motor Company stock in the name of Mrs. Vogel.

Q. (By Mr. Resnik): You had knowledge of

(Testimony of Emil W. Kubik.)

the Chevrolet Motor Company stock that stood in Mrs. Vogel's name? [168]

A. I got that from the corporate records, yes.

Q. Then she made some disclosure as to the Anse Vista property? A. Yes.

Q. Will you tell us, as best as you can recall, where the conversation wherein she disclosed the existence of the Anse Vista property?

A. I believe I put the question to her, whether there were any assets in her name, and she said there was the Anse Vista Apartments. Then she was urged by her son to remain quiet. She said, "Well, it's Dad's." He said, "Keep quiet, Mother. You know you're talking too much." And she said, "It's all Dad's. You know it is." But he continued to urge her to keep quiet.

Q. After the statement with reference to the Anse Vista property what, if any, discussions were had in connection with any other properties that might have been in her name alone?

A. There was no discussion with regard to any other property, except that all-inclusive statement that was made, as I just stated.

Q. From what source did you ascertain that there were certain stocks in the name of Mrs. Vogel alone?

A. After we adjourned the meeting in Mr. Tevis Jacobs' office Mrs. Vogel and her son and I went to the Marina Avenue Branch of the Bank of America and Mrs. Vogel got her safety [169] deposit box and we made an inventory of the con-

(Testimony of Emil W. Kubik.)

tents of those assets in her name that bore the—

Mr. Calhoun: Are you reading something?

Mr. Resnik: No.

The Witness: I have it here for reference, if necessary.

Mr. Resnik: Would you prefer we remove the papers?

Mr. Calhoun: No, no, no. I didn't know whether he was or not. I just wanted to know. That is all right.

A. (Continuing) We made an inventory of the contents with regard to those securities that were acquired prior to the death of the decedent, Leslie Vogel.

Q. (By Mr. Resnik): Did you have any discussion with the parties present at that time as to the nature of the securities that were being inventoried?

A. Nothing of any material nature that I recall, just general conversation.

Q. Did you have any discussion with Mrs. Vogel as to the general nature of the property that was owned by her and her husband, irrespective of the names in which the individual assets might have been set up?

A. She couldn't recall, she said she didn't know, "It belonged to both of us, it was our property."

Q. She said whatever property they had "belonged to [170] both of us, it was our property"?

A. Yes.

Q. Is that correct?

A. That is correct.

(Testimony of Emil W. Kubik.)

Q. How long did the interview with Mrs. Vogel and Les Vogel, Jr., take, in the office of Mr. Jacobs.

A. I would say about an hour.

Q. Thereafter, did you then seek an interview with the other co-executor, Mr. Partridge?

A. That is true, I did.

Q. Can you tell us when and where you met with Mr. Partridge?

A. I called on him at his office, I made a phone call to him, making an appointment, since he was co-executor, to get some information with respect to what seemed to be confusion to me as to the true characterization of the property.

Q. Where did the first, if there was more than one, where did the first meeting take place?

A. January 14, 1955.

Q. Where? A. In his office.

Q. Was there more than one meeting?

A. There was another.

Q. When was that? A. January 18, 1955.

Q. And where was that held?

A. In his office.

Q. Can you tell us, as best as you can, the nature, the content of the discussions that you had with Mr. Partridge on each of those days? That is, can you tell us as to what you said and as to what he said?

Mr. Calhoun: What day, first?

Q. (By Mr. Resnik): If you can segregate them between the two dates, then give us the conversations held on January 14 first.

(Testimony of Emil W. Kubik.)

A. I don't believe I can segregate them without referring to any notes.

Q. Can you recollect?

A. It would be context of both collectively.

Q. You can recollect the context of both the conversations collectively? A. That is correct.

Q. Can you tell us, as best you can recall, the conversation, what was said at those meetings?

A. Mr. Partridge said he had no knowledge of the existence of any agreement with regard to the transmutation of property. I queried him with respect to the terminology in a probated will in regard to community property as declared by the testator, and he said that was his own language; that, however, it was based on information disclosed by him to the [172] testator; that the plan of the testator was to make an equal division for the three survivors, his wife and his two children.

Q. Did you have any discussion with Mr. Partridge with reference to family allowance?

A. I did not.

Q. Did you have any discussion with reference to the family allowance matter at the interview held with Mrs. Vogel in Mr. Jacobs' office?

A. Only to ask her the extent of her household expenses, to ascertain the standard of pattern they had been enjoying in the immediate recent past, and she replied she didn't know.

Q. In connection with the audit of the return and in the determination of the deficiency here in question, there was a disallowance of part of the

(Testimony of Emil W. Kubik.)

family allowance claimed based upon your report. Will you please explain to us briefly, yet as fully as you can, the basis upon which you made the determination that family allowances should be in the amount of \$1,000 a month for 18 months?

A. Well, in examining the various bank accounts and ledger records, several savings accounts and the checking account, those items that were substantial comparatively, such as a thousand, 15 hundred, 5 thousand, I presumed, were for inter-transfer between accounts or for investment purposes, and those debit items, there is no way of identifying it because it was just a debit item appearing on the ledger record, I [173] presumed were for living costs and I took the cumulative total of those items in annual periods and they ran some less than 6 or 7 thousand dollars a year. So, allowing for possibly cash disbursements, I concluded that their living costs would be no more than \$1,000 a month, probably less.

Q. Your analysis was based upon the living costs of the family as a whole, that is?

A. That is correct.

Q. Whoever occupied the household at the time?

A. I don't know about how the funds were applied. I took the cumulative total of the debit items appearing in the bank account and made a liberal allowance for any cash disbursements.

Mr. Resnik: I have no further questions at this time.

(Testimony of Emil W. Kubik.)

The Court: You may cross-examine.

Cross Examination

Q. (By Mr. Calhoun): When you discussed with Mr. Partridge with regard to no knowledge of any agreement as to transmutation of property, you were discussing a written agreement, were you not? A. That is correct.

Q. Did he tell you about the proposed will that he had prepared? A. Yes, he did.

Q. He went over that, saying that he thought he had [174] separated the property?

A. No, he made no inference that there had been any separation that had been consummated as yet.

Q. You mentioned that he discussed—

Mr. Calhoun: Well, that I move be stricken as a conclusion of the witness, as to its not being consummated as yet.

Q. (By Mr. Calhoun): I am talking about your conversations with him.

A. My conversation with Mr. Partridge was to develop whether or not there had been a natural transmutation. He said he had no knowledge of any agreement thereof. He showed me a copy of his unexecuted will.

Q. You are talking about a copy of the unexecuted will; that refers to a written agreement, does it not?

A. That is correct. He had no knowledge of it.

Q. That is what I am asking you. He had no knowledge of any written agreement?

(Testimony of Emil W. Kubik.)

A. That is right.

Q. He didn't say anything about any other agreement? A. That is correct.

Q. Written agreement, we are discussing; when you said "written agreement" he said "written agreement"?

A. Well, he didn't say there was any oral agreement, either. [175]

Q. Did you see the note he had here, introduced, about transmutation of——? A. 1943?

Q. Yes. A. I did not.

Q. Did you see his notes?

A. I didn't ask to see his notes.

Q. Did you see them? A. No.

Q. Didn't you think at the time they had some material bearing?

A. I thought about it, I thought I could rely on his knowledge, that he knew what he was doing.

Q. When did you discuss this with him?

A. January 1955.

Q. And when the will was signed was 10 years before that, wasn't it, isn't that true?

A. That is correct.

Q. 1946, almost 10 years?

A. But he was also co-executor, and he seemed to be familiar with the family affairs.

Q. That is true. You knew, however, at the time, you wanted to correct yourself on that matter, you knew that the Les Vogel Chevrolet stock was divided three ways, didn't you? A. Oh, yes.

(Testimony of Emil W. Kubik.)

Q. You knew that all the time?

A. I would say that the stock certificates were in separate names.

Q. That is what I mean. A. Yes.

Q. Did you inquire into the matter of the limited partnership before, where it showed each one had a one-third interest? Did you go into that phase of it?

A. I discussed it with Mr. Skinner, yes.

Q. You didn't discuss with Mrs. Vogel and use that word "transmutation agreement" when you were discussing with her, did you?

A. No. But I discussed joint tenancy, community property and separate property with Mrs. Vogel.

Q. Did you define what "joint tenancy" was before you discussed it with her?

A. No, I did not. But I asked her did any change in her property holdings take place, and she said she couldn't recall, "Everything Les did he did for me."

Q. Did you discuss what "community property" meant when you discussed it with her?

A. I did not.

Q. But I am sure you drew the conclusion that she is not too well versed in legal matters and phraseology?

Mr. Resnik: I think that is an improper question. [177] It is not a matter of what Mr. Kubik thinks of Mrs. Vogel.

The Court: Are you objecting?

(Testimony of Emil W. Kubik.)

Mr. Resnik: I am objecting, yes.

The Court: Objection sustained.

Q. (By Mr. Calhoun): When you went over the bank deposits and the bank accounts and the application of funds, checking the family allowance, did you run into the item of the two fur coats?

A. Was that subsequent to death?

Q. That was subsequent to death, January 1951, and the date of the death of the decedent was August 16, 1950. This was January 1951.

A. I merely checked the records up to the date of death, because I was concerned with establishing the standards which they enjoyed. So I checked nothing after August 16, 1950.

Q. Did you ask her at that time whether she had had any fur coats before? A. I did not.

Q. Did you know that in addition to this family allowance she received a widow's salary from the business for sometime after his death?

A. I saw a copy, some reference to a resolution that the decedent's monthly salary was to continue to be paid to the widow. [178]

Q. You satisfied yourself she actually received the sum, though——?

A. I did not. I wasn't interested in it.

Q. In the widow's allowance?

A. In the widow's allowance?

Q. Yes, that is what I mean.

A. I may have asked counsel if it was paid. Mr. Jacobs told me it had been. That was enough for me.

(Testimony of Emil W. Kubik.)

Q. At the time you were discussing this matter with Mrs. Vogel was she making her answers responsive to your questions, did she answer responsive to every question you propounded to her?

A. I would say she did. And if she didn't know, she said, "I don't recall," or "I don't know."

Q. But my question to you is, did she answer every question that you asked her with an answer that was responsive to your question?

A. I wouldn't say entirely so, no.

Q. Did she volunteer a lot of things and talk about everything else except the point you were discussing?

A. Well, the Anse Vista was one of voluntary disclosure, but—

Q. I am talking about other things she was talking about. Did she sort of ramble like she did here in the courtroom? A. Somewhat. [179]

Mr. Resnik: That is a conclusion of counsel. The Court heard the witness and can determine how her answers were. I will object to the question.

Mr. Calhoun: I will put it this way:

Q. (By Mr. Calhoun): You were here when she was talking? A. Yes.

Q. And you were here when the Court instructed her to answer the questions? A. Yes.

Q. Did you have the same difficulty yourself?

A. Not to the same degree, not nearly to the same degree, but somewhat, yes.

Q. Every question you asked her, were you sure she understood it?

(Testimony of Emil W. Kubik.)

A. I gathered from her response she had.

Mr. Calhoun: I have nothing further.

Redirect Examination

Q. (By Mr. Resnik): During the course of your meeting with Mrs. Vogel was Mr. Jacobs, her attorney, present at all times?

A. Except when we were out to the Marina Avenue Branch of the Bank of America.

Q. I am talking about the time you were in his office.

A. In his office? He may have stepped out on occasion [180] for a few moments.

Q. But during the substantial part of the hour that you were there he was present?

A. He was.

Q. And he heard the questions that you put to Mrs. Vogel? A. Yes, he did.

Q. Did she discuss any of the matters with him at that time?

A. No. But when I asked her about the community property, joint tenancy, separate property, why, he asked her not to answer the question.

Q. Notwithstanding his admonition, did she answer the question?

A. She did not answer the question.

Q. Didn't you testify earlier she said whatever property they had they owned together, something to that effect?

A. That was along some other line of questioning, particularly in regard to the income tax re-

(Testimony of Emil W. Kubik.)

turns, where I was trying to get some explanation of why it was reported as community income on the income tax returns.

Q. What did she say?

A. She said, "Well, it is both our money," and that he handled all business affairs.

Q. You had two meetings with Mr. Partidge, one of the co-executors of the estate? [181]

A. Yes.

Q. Did you make clear to him the purpose of your visits to him?

A. I think he understood. I made clear to him I was trying to establish the true characterization of the property, whether it was community or separate, because there was marital deduction involved.

Q. You had one meeting on the 14th of January and then you returned again on the 18th?

A. That is correct.

Q. Was there any reason for your returning on the 18th? A. That is correct.

Q. Was there any reason for your returning on the 18th?

A. Other than something must have developed through an interview with Mr. Skinner or some other source, that I thought perhaps Mr. Partridge could throw some light on it.

Mr. Resnik: I have no further questions at this time.

Mr. Calhoun: That is all.

The Court: You are excused.

Mr. Resnik: If your Honor please, in light of

the nature of the proof or absence thereof in the record as to the family allowance, there being no evidence now in the record as to its payment, since Mrs. Vogel was not able to identify certain checks that were put before her, I would ask leave of the Court for permission to file an amendment to our [182] answer, in due course, disallowing the amount of family allowance that we did grant in the statutory notice and pray for the increased deficiency that would result.

The Court: Have you anything to say?

Mr. Calhoun: If that is the case, I would like to re-open and call Mr. Partridge back here to identify these checks, that these checks were issued by the estate and paid to her, that is her signature on them, and that is exactly what they were.

I can do it, if you want to go ahead and do it.

The Court: The testimony was quite correct yesterday.

Mr. Calhoun: It was, and—

The Court: I take it, it's just a question of the Court's determination of how far to believe or disbelieve the testimony.

Mr. Calhoun: I am in possession of a, I make an offer to show she received that money as the family allowance, that is what it was for. I can show it. If you want me to do it, I will go ahead and do it. It will take us awhile.

Mr. Resnik: If your Honor please, I am not satisfied with the state of the record, in light of

the replies that were given to me on at least two occasions by the witness.

The Court: Did you wish to have Mr. Partridge recalled?

Mr. Calhoun: He probably can't get here before noon. [183] I would like to have him called, however.

The Court: If you wish to call him, you may have that privilege. Do you think he can add anything to the testimony that has already been given?

Mr. Calhoun: It further shows, if your Honor please, on the final report of the Court and so forth, that she did receive this family allowance, it was paid to her. I am just trying to save time. I think that counsel is quibbling over this item, on the state of the record.

If you will concede those are paid to that—otherwise I will have to bring the accounting in for the Court, to find out, to prove it.

Without any prejudice as to whether it is reasonable or not, we contend that this was actually the amount paid to her, according to the Court's order.

Mr. Resnik: I can only go this far, your Honor, I can only stipulate that there does appear on the Petitioner's Exhibit No. 19—

The Court: All of those checks are divisible by 1,500, are in the amount of 1,500 or are divisible by 1,500?

Mr. Resnik: None of the checks are in the amount of 1,500; all are in other amounts.

Mr. Calhoun: When they were short of money.

Mr. Resnik: We can stipulate that there does appear in Petitioner's Exhibit 19 a reference under the legend "Cr", [184] which is taken to mean "Credit", which was paid, which appears as follows: "Said administrators hereby credit themselves with disbursements as follows"— a number of them appear, among which appears "Elizabeth S. Vogel, widow, per order of Court for family allowance, \$27,000." We will stipulate that that does appear in Exhibit 1.

The Court: How much do those checks total?

Mr. Resnik: The checks total \$27,000, I am advised by Mr. Kubik. And I would stipulate that, of course, your Honor.

The Court: I don't think it is necessary to bring in Mr. Partridge.

Are you still pressing your motion?

Mr. Resnik: Yes, I would say that, whether my stipulation is sufficient for the Court to find the actual amount of payment is a determination for the Court to make, I would still ask leave for permission to file an amendment to answer in due course. Perhaps after I have had an opportunity to review the transcript in the matter I may not press it, but at this time I wouldn't want to be precluded from doing so, if I should find that I should.

The Court: Of course, under the statute, he has the privilege of making a claim for increased deficiency at any time during the hearing or rehearing, and I would grant permission for that purpose.

Mr. Calhoun: Are you through?

Mr. Resnik: Yes, your Honor.

Mr. Calhoun: I have just a little rebuttal.

Would you take the stand, Mr. Vogel, again briefly?

Whereupon

J. LESLIE VOGEL, JR.

a witness called in rebuttal by and on behalf of the Petitioners, having been previously sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Calhoun): To clear up the state of the record at the present time, Mr. Vogel, were you present at this conversation mentioned by Mr. Kubik and your mother? A. Yes, sir.

Q. You were present? A. Yes.

Q. Do you recall the discussion or a remark that you made telling your mother she talked too much?

A. Along that line.

Q. What was that occasion?

A. Well, I don't recall what the question was or what her answer was. If Mr. Kubik has information of what he asked her and what her answer was, I—

Q. I mean by that, did you have, were there a series of [186] questions being asked her at that time? A. Yes, there was.

Q. I will ask you whether or not her answers were responsive to the questions.

Mr. Resnik: I object, your Honor. It calls for an opinion and conclusion of the witness.

The Court: He may answer.

(Testimony of J. Leslie Vogel, Jr.)

A. I don't think that they were.

Q. (By Mr. Calhoun): Do you recall why you made that statement? A. Well,—

Mr. Resnik: I submit, your Honor, the question has been asked and answered, the witness' memory has been probed, and I object to its being asked again.

The Court: Overruled.

A. My mother's interpretation of the law is such that "Well, this was all ours. If I were to die, it would go to him; if he were to die, it would go to me." She doesn't understand what property standing in her name means to her.

Mr. Resnik: I move that the answer be stricken as not responsive to the question.

The Court: The answer will be stricken.

Q. (By Mr. Calhoun): I am asking you why you said that, if you know.

A. She made the statement that "It was Dad's." It was [187] not his. That is referring to the Anse Vista property.

Q. And you made that remark, is that right?

A. Yes.

Cross Examination

Q. (By Mr. Resnik): You said that you thought your mother's answers to some of the questions were not responsive? A. That is right.

Q. You just testified to that?

A. What does "responsive" mean in this instance?

(Testimony of J. Leslie Vogel, Jr.)

Q. I don't know. The question was asked of you and you answered it. What do you think it means?

A. That the proper answer is not being given.

Q. What do you mean by "proper", proper as you give it or proper as the one who is answering gives it?

A. No. Going around in a circle to answer.

Q. What question was asked by Mr. Kubik and what answer was given by your mother that you now think was not responsive?

A. I do not know what the question Mr. Kubik asked was. I remember that there was a question asked, but what the question was I don't recall.

Q. So now you are saying that her answer to one question may not have been responsive?

A. To many of them, that I heard.

Q. What was one of those questions that Mr. Kubik asked? [188]

A. I can't remember the question.

Q. How do you remember her answer, then?

A. I remember a generality of an answer that was coming out in almost every question that was asked.

Q. What was that generality of an answer that came out?

A. That "This is ours, Dad's and mine."

Q. How many times did she say that?

A. I wouldn't know.

Q. Did she say it more than once?

A. It's possible.

(Testimony of J. Leslie Vogel, Jr.)

Q. Do you know what question was asked when she said, "It's Dad's and mine"? A. No.

Q. So that that answer might have been responsive to the question, because you don't know what the question is?

A. You made the statement yesterday. I didn't.

Q. I am not making any statement. You testified in responsive to a question from Mr. Calhoun that you thought her answers were not responsive. I now ask you, what were the questions that were put by Mr. Kubik and what were the——?

The Court: He has answered that several times. He said that he doesn't know.

Q. (By Mr. Resnik): How long did the interview take?

A. I wasn't there at the start, so I don't know.

Q. How long did it continue after you appeared?

A. Possibly 15 to 20 minutes.

Q. Did your mother tell you what had transpired prior to your arrival? A. No.

Q. Did Mr. Jacobs tell you what had transpired prior to your arrival? A. I don't recall.

Mr. Resnik: I have no further questions at this time.

Redirect Examination

Q. (By Mr. Calhoun): Do you know of your own knowledge whether or not your mother received the \$27,000 family allowance?

A. What?

Q. Do you know of your own knowledge whether

(Testimony of J. Leslie Vogel, Jr.)

or not she received \$27,000 family allowance from the estate? A. Did she receive checks——?

Mr. Resnik: If you don't know——

A. (Continuing) —Did she receive checks to that amount?

Q. (By Mr. Calhoun): Yes. A. Yes.

Mr. Calhoun: No further questions.

Recross Examination

Q. (By Mr. Resnik): You say your mother received checks of \$27,000 from the estate. Did you disburse those checks?

A. I never had my hands on them.

Q. Do you know what the purpose of the disbursements was?

Mr. Calhoun: What disbursements are you referring to?

Mr. Resnik: Of these checks.

Mr. Calhoun: By the estate or by him?

Mr. Resnik: By the estate. He testified that he, of his own knowledge, knows what these disbursements were for.

A. I haven't seen the checks in quite awhile, but a letter did accompany them from Mr. Partridge's office.

Q. Do you open your mother's mail?

A. I read these letters.

Q. What was the substance of the mail, the letter that accompanied the checks?

A. I would say, I don't know the amount, it might have been 10 or 12 or 13 thousand dollars, the first check. It was on the basis of \$1,500 a

(Testimony of J. Leslie Vogel, Jr.)

month and was issued when there were funds available to the administrators of the estate to pay her the widow's allowance.

Mr. Resnik: At this time I move, your Honor, that that answer be stricken and the other answers given by Mr. Vogel as to his knowledge of the source and purpose of these payments be stricken, because it is apparent from his answer that he had no knowledge of his own on these matters, that his knowledge [191] is clearly hearsay, at best from the reading of a letter.

The Court: The motion is denied.

Q. (By Mr. Resnik): So whatever knowledge you had derived itself from reading a letter?

A. Yes.

Q. You had no knowledge of your own, as a participant in the distribution of the funds that are here being talked about?

A. I don't know what point you are trying to get at.

Q. You testified that you knew of your knowledge, your own knowledge, that the checks we have been talking about were disbursed to your mother for family allowance?

A. That was my understanding, yes.

Q. Your understanding based upon what?

A. The reading of the award of the Superior Court, giving my mother an allowance while the estate was being probated or in probate.

Q. What did you read, from the Superior Court, did you say?

(Testimony of J. Leslie Vogel, Jr.)

A. I didn't—I said the award from the Superior Court giving her \$1,500 a month allowance while the probate was, while the—I don't know the words—while the estate was being, was in probate.

Q. Where did you get your information as to the award [192] by the Probate Court?

A. I was told about it probably by Mr. Partridge or Mr. O'Connell or Mr. Skinner.

Q. You had no knowledge other than that that was communicated to you secondhand as to the fact that your mother was receiving—

The Court: How do you get knowledge? What is the use of picking at words like that?

Mr. Resnik: If your Honor please—I submit, your Honor, that knowledge based upon hearsay is not the kind of knowledge that permits a witness to testify in this Court. It is hearsay to him as to what these expenditures were for, and if they seek to predicate a finding upon that, it is based upon hearsay evidence that should properly have been excluded, as my motion—

The Court: That is not my understanding.

Further questions?

Mr. Calhoun: I have no further questions.

The Court: You are excused.

(Witness excused.)

Mr. Resnik: I will recall Mr. Kubik to the stand.

Whereupon

EMIL W. KUBIK

a witness called on rebuttal by the Respondent, having been previously sworn, was examined and testified further as follows: [193]

Direct Examination

Q. (By Mr. Resnik): Mr. Kubik, I want to pursue just one small matter with you. Directing your attention to the conversations you had with Mrs. Vogel at the office of Mr. Jacobs and at the time that her son, Les Vogel, Jr., was present, you testified that during the course of your meeting Mr. Vogel, Jr., stated to his mother not to speak further or to keep quiet or words to that effect. Do you recall your testimony in that regard?

A. I do.

Q. Can you restate for us the circumstances under which such remark or remarks were made by Mr. Les Vogel, Jr.?

Mr. Calhoun: That has already been testified to.

Mr. Resnik: If your Honor please, they sought to impeach him by rebuttal testimony. I have sur-rebuttal here.

The Court: You may answer.

A. I asked Mrs. Vogel if she knew the difference between joint tenancy, separate property and community property, and any assets in their respective names. She said, she made reference to the Anse Vista Apartment House, and Mr. Vogel, Jr., here said, "Be quiet, Mother. You are talking too much." And she said, "Well, it was Dad's, you

(Testimony of Emil W. Kubik.)

know, it was all Dad's." And he said, "Be quiet, Mother. You're talking too much."

Q. That is your best recollection, now, the only time during the conversation when Mr. Vogel interjected remarks of [194] that or a similar vein?

A. He may have interjected other remarks, but those were the only ones I recall that were material for my purpose, and I recalled it.

Mr. Resnik: I have no further questions.

Cross Examination

Q. (By Mr. Calhoun): I understand you said you asked her if she knew the difference between joint tenancy, community property and separate property, and what was her answer to that?

A. And assets in their respective names.

Q. And did she say she knew the difference?

A. She said, "Well, there is the Anse Vista Apartment," she said, "That was Dad's."

Q. Did she answer your question?

A. I wouldn't say in full, but in regard to assets in respective names, in part, yes.

Q. Did you pursue the question further, if she knew the difference between joint tenancy, separate property and community property?

A. I did, and Mr. Jacobs told her not to answer the question.

Q. Did she answer any of that question for you?

A. Ultimately, no

Mr. Calhoun: That is all. [195]

Mr. Resnik: No further questions.

The Court: You are excused.

(Witness excused.)

The Court: Do you have further witnesses?

Mr. Resnik: We have no further witnesses, your Honor. We will submit our case.

Mr. Calhoun: We have no further evidence.

The Court: How much time do you need for briefs?

Mr. Resnik: In view of the fact that there are lengthy briefs to be copied, I would appreciate the Court's giving us more time than that permitted by the rules.

The Court: Would you prefer ad seriatim briefs or simultaneous briefs?

Mr. Resnik: Ad seriatim briefs, in view of the fact that I am not aware of what the Petitioners' contentions fully are.

The Court: Forty-five days for the Petitioners and 30 days thereafter for the Government's reply.

Mr. Resnik: May I respectfully request that we have 45 days, in view of the fact that we must submit our briefs to Washington after the 30 days?

The Court: Forty-five.

The case will be submitted on the record as made. The Clerk will announce your brief dates.

Court will be in recess until Monday morning at [196] 10 o'clock.

The Clerk: Petitioners' original brief is due August 6.

Respondent's answering brief—I don't want to give you a Sunday—September 20.

Mr. Calhoun: That means it has to be where?

The Clerk: Washington, D. C.

Petitioner's reply brief is due on October 21.

(Whereupon, at 11:45 o'clock a.m., Friday, June 21, 1957, the hearing in the above-entitled matter was closed.) [197]

[Endorsed]: T.C.U.S. Filed July 9, 1957.

[Title of Tax Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Court Room No. 2, Internal Revenue Building, Washington, D. C., Wednesday, August 6, 1958.

(Met, pursuant to notice, at 1:30 o'clock a.m.)

Before: Hon. Ernest H. Van Fossan, Judge.

Appearances: Robert E. Whitley, Esq., (Hon. Nelson P. Rose, Chief Counsel, Internal Revenue Service), 5000 Internal Revenue Building, Washington, D. C., appearing for Respondent.

Proceedings

The Clerk: Docket 57535, the Estate of J. Leslie Vogel.

Mr. Whitley: My apologies for being a little late.

The Court: Did you wish to see the taxpayer's file?

Mr. Whitley: Yes.

The Court: This matter is before us on Petitioner's objection to computation of the Respondent under Rule 50. Will you state your position, Mr. Whitley.

Mr. Whitley: Respondent's position is, your Honor, that the objections raised; namely—I mean the objections raised relate to adjustments for attorneys fees paid after the filing of the petition in this case and adjusted for funeral expenses to the extent of one-half—alleged to be one-half—by the Petitioner's counsel.

The adjustment with respect to attorneys fees, Respondent shows there has been no proof offered as to the payment of that, and it is merely referred to as a payment, or it hasn't been shown whether the payment was by the estate or by the individual.

If the payment had been made by the estate, it would then be the subject of a deduction for such expenses. But here it is not shown whether the payment of \$1,000 was made by the estate or by the individual. His name is in the record.

The Court: Is it alleged in the petition?

Mr. Whitley: Not that I know of. I don't think so. I don't have a copy of the petition before me. The field office sent me no files on it, other than just a copy of this computation.

The next one, on the question of funeral expenses, the record is completely void of any mention of adjustment or allowance of that sum or any sum.

The Court: That grows out of the community property law?

Mr. Whitley: It does, but this is a brand new issue, as far as I can tell from the record. You just don't come in and allow funeral expenses whether they have been mentioned or not. They haven't been claimed in the petition, and no proof

was offered of them. At least that is the information that the trial attorney gives me.

This adjustment, then, trial attorney tells me that the deduction relating to funeral expenses, "No issue on that matter was raised, and it is difficult to ascertain what Petitioners seek to make. In the absence of an issue raised and deleted, the apparent authority upon which Petitioner relies—."

"In any event, the apparent authority upon which Petitioners rely is the Estate of Lee (1948 11 TC 141)."

That, we contend, is clearly distinguished from the attorneys fees in controversy here.

It is the position of the Government that no proof has been offered and no issue was actually made in the pleadings with respect to these two adjustments. They are, in fact, new issues coming before the Court, under Rule 50, which is prohibited.

The Court: In the petition of this case three errors are alleged. First is the determination by the Commissioner that the assets of decedent standing in his name were not his separate property, but were together with assets standing in the name of Elizabeth S. Vogel, his widow, under community property.

Second, the determination by the Commissioner that the sum of \$1500 per month for the support of the widow for a period of 18 months during administration of the estate was excessive, and that no more than \$1,000 per month for said period of time was allowable deduction.

— And third, the determination by the Commissioner that the cost of maintenance and upkeep of a boat owned by the estate was not an allowable deduction.

As to those issues, Petitioner did not press Issue 3, but conceded it was not allowable.

It appears that the attorney fees paid Petitioner's counsel were not made the subject of assignment of error. They are not in the case.

Funeral expenses deducted to the extent of one-half fall under the community property law of California.

An order will be entered approving the Commissioner's computation.

(Whereupon, at 1:45 p.m., the Court adjourned.)

[Endorsed]: T.C.U.S. Filed August 14, 1958.

[Endorsed]: No. 16304. United States Court of Appeals for the Ninth Circuit. Estate of J. Leslie Vogel, Robert G. Partridge and Elizabeth S. Vogel, Executors, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: December 23, 1958.

Docketed: December 29, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

Docket No. 16304

ESTATE OF J. LESLIE VOGEL, ROBERT G.
PARTRIDGE and ELIZABETH S. VOGEL,
Executors, Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD FOR PETITIONERS
ON REVIEW

The Petitioners on Review hereby adopt their Petition for Review and Designation of Contents of Record on Review, documents Nos. 12 and 14, respectively, heretofore filed with the Tax Court of the United States and transmitted to this court as a portion of the record on review as Petitioners' on Review Statement of Points and Designation of Record in compliance with Rule 17 (6) of this Court.

/s/ GRANT G. CALHOUN,
Counsel for Petitioners on
Review.

Notice of Mailing Attached.

[Endorsed]: Filed January 9, 1959. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PARTS OF
RECORD TO BE PRINTED

In addition to the parts of the record designated for printing by the petitioners in the above-entitled case, respondent designates the following documents as material to the consideration of this appeal:

No. 4, Stipulation of Facts, filed June 20, 1957.

No. 8, Respondent's Computation for Entry of Decision, filed June 24, 1958.

No. 9, Petitioner's Objection to Computation of Respondent Under Rule 50.

No. 10, Official Report of Proceedings before the Tax Court, August 6, 1958.

/s/ CHARLES K. RICE,
Assistant Attorney General,
Counsel for Respondent.

[Endorsed]: Filed January 19, 1959. Paul P. O'Brien, Clerk.